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# GAMBLING DEVICES

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## HEARINGS BEFORE THE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE HOUSE OF REPRESENTATIVES EIGHTY-SEVENTH CONGRESS

SECOND SESSION

ON

H.R. 3024, H.R. 8410, and S. 1658

BILLS TO AMEND THE ACT OF JANUARY 2, 1951, PROHIBITING  
THE TRANSPORTATION OF GAMBLING DEVICES IN INTER-  
STATE AND FOREIGN COMMERCE

JANUARY 16, 18, AND 19, 1962

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## GAMBLING DEVICES

TUESDAY, JANUARY 16, 1962

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
*Washington, D.C.*

The committee met at 11 a.m., pursuant to call, in room 1334, New House Office Building, Hon. Oren Harris (chairman of the committee) presiding.

The CHAIRMAN. The committee will come to order.

The Chair would like to ask the indulgence of our guests who are here today and urge that you be as quiet as you can in coming and going or moving around. We would like to get along with the hearing and we want those in the room to be as quiet as possible for these hearings.

Today, the Committee on Interstate and Foreign Commerce is meeting to open its legislative session for 1962 by beginning hearings on bills to amend the act of January 2, 1951, prohibiting the transportation of certain gambling devices in interstate and foreign commerce. The bills under consideration are Senate bill 1658, which has already passed the other body and has been referred to this committee, H.R. 3024, and H.R. 8410 on the same subject matter.

This proposed legislation has been recommended by the Attorney General of the United States, the Honorable Robert F. Kennedy, as a part of the Justice Department's legislative program to combat organized crime and racketeering.

In 1951 the Congress passed legislation known as the Johnson Act (Public Law 81-906) to outlaw slot machines; that is, the "one-armed bandits," and similar gambling devices by prohibiting the use of the channels of interstate or foreign commerce for the shipment of such machines or devices to States where they were prohibited by law.

However, this law did not cover what is referred to as certain pinball machines, roulette wheels, and other similar mechanical devices designed for use primarily in gambling. The committee is advised that the profits from such gambling are huge and they are the primary source of funds which finance organized crime all throughout the country.

The pending legislation would broaden the definition of gambling devices contained in the Johnson Act to include additional types of machines or mechanical devices, including pinball machines, roulette wheels, and devices which are designed and manufactured primarily for use in connection with gambling. Pinball machines and other mechanical devices which are not used for gambling purposes would not, I am told by the sponsors of the legislation, be subjected to the proposed law. This will be one of the major subjects of inquiry in



an effort to determine the distinction between what would be covered by this legislation and what would not be covered.

A copy of S. 1658, H.R. 3024, and H.R. 8410, together with reports from executive departments and agencies, will be made a part of the record at this point.

(The bills and reports follow:)

[S. 1658, 87th Cong., 1st sess.]

AN ACT To amend the Act of January 2, 1951, prohibiting the transportation of gambling devices in interstate and foreign commerce

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That section 1 (a) (2) of the Act of January 2, 1951 (64 Stat. 1134; 15 U.S.C. 1171), is amended to read as follows:

"(2) any other machine or mechanical device (including, but not limited to, roulette wheels and similar devices) designed and manufactured primarily for use in connection with gambling, and (A) which when operated may deliver, as the result of the application of an element of chance, any money or property, or (B) by the operation of which a person may become entitled to receive, as the result of the application of an element of chance, any money or property, provided that the provisions of this subsection shall not apply to parimutuel or other betting equipment or materials used or designed for use at racetracks or other licensed gambling establishments where betting is legal under applicable State laws; or".

SEC. 2. Section 1 of such Act is further amended by adding thereto the following subsections:

"(d) The term 'interstate commerce' includes commerce between one State, possession, or the District of Columbia and another State, possession, or the District of Columbia.

"(e) The term 'foreign commerce' includes commerce with a foreign country.

"(f) The term 'intrastate commerce' includes commerce wholly within one State, the District of Columbia, or possession of the United States."

SEC. 3. Section 3 of such Act is amended to read as follows:

"SEC. 3. (a) It shall be unlawful for any person during any calendar year to engage in the business of manufacturing, repairing, reconditioning, dealing in, or operating any gambling device if in such business he buys or receives any such device knowing that it has been transported in interstate or foreign commerce, or sells, ships, or delivers such device in interstate or foreign commerce, or sells, ships, or delivers such device knowing that it will be introduced into interstate or foreign commerce, unless such person shall, during the month prior to engaging in such business in that year, register with the Attorney General of the United States his name and trade name and the address of each of his places of business, designating his principal place of business within the United States.

"(b) Every person required to register under the provisions of this Act shall maintain an inventory record of all gambling devices owned, possessed, or in his custody as of the close of each calendar month. The record shall show the individual identifying mark and serial number of each assembled gambling device and the quantity, catalog listing, and description of each separate subassembly or essential part, together with the location of each item listed thereon.

"(c) Every person required to register under the provisions of this Act shall maintain for each place of business a record for each calendar month of all gambling devices sold, delivered, or shipped in intrastate, interstate, or foreign commerce. The record of sales, deliveries, and shipments for each place of business shall show the individual identifying mark and serial number of each assembled gambling device and the quantity, catalog listing, and the description of each separate subassembly or essential part sold, delivered, or shipped together with the name and address of the buyer and consignee thereof and the name and address of the carrier.

"(d) Every person required to register under the provisions of this Act shall maintain for each place of business a record for each calendar month of all gambling devices manufactured, purchased, or otherwise acquired. This record shall show the individual identifying mark and serial number of each assembled gambling device and the quantity, catalog listing, and description of each separate subassembly or essential part, manufactured, purchased, or otherwise acquired



together with the name and address of the person from whom the device was purchased or acquired and the name and address of the carrier.

"(e) Every manufacturer required to register shall number serialim each assembled or partially assembled gambling device which is to be sold, shipped, or delivered, and shall stamp on the outside front of each such assembled or partially assembled gambling device so as to be clearly visible the number of the device, the name of the manufacturer, and the date of manufacture. And every person required to register under the provisions of this Act shall record the data herein designated in the records required to be kept.

"(f) Each record required to be maintained under the provisions of this Act shall be kept for a period of five years.

"(g) (1) It shall be unlawful for any person required to register under the provisions of this Act to sell, deliver, ship, or possess any gambling device which is not marked and numbered as required by this Act or for any person to remove, obliterate, or alter the manufacturer's name, the date of manufacture, or the serial number on any gambling device;

"(2) It shall be unlawful for any person knowingly to make or cause to be made, any false entry in any record required to be kept under this section; and

"(3) It shall be unlawful for any person who has failed to register as required by this Act or who has failed to maintain the records required by this Act to manufacture, recondition, repair, sell, deliver, ship, or possess any gambling device.

"(h) Agents of the Federal Bureau of Investigation shall, at the principal place of business within the United States of any person required to register by this Act, at all reasonable times have access to and the right to copy any of the records required to be kept by this Act, and in case of refusal by any person registered under this Act to allow inspection and copying of the records required to be kept, the United States district court where the principal place of business is located shall have jurisdiction to issue an appropriate order compelling production.

"(i) No person shall be excused from maintaining the records designated herein, producing the same or testifying before any grand jury or court of the United States with respect thereto for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a criminal penalty or forfeiture. But upon asserting the privilege against self-incrimination any natural person may be required to open the records designated herein to inspection or to testify before any grand jury or court of the United States with respect thereto: *Provided*, That no such person shall be criminally prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing disclosed as a result of the inspection of such records or testimony with respect thereto. No witness shall be exempt under this section from prosecution for perjury or contempt committed while giving testimony or producing evidence under compulsion as provided in this Act.

"(j) The Attorney General is authorized and directed to make and enforce such regulations as may in his judgment be necessary to carry out the purposes of this Act and the breach of any of such regulations shall be punishable as provided in section 6 of this Act."

SEC. 4. This Act shall take effect on the sixtieth day after the date of its enactment.

Passed the Senate July 28, 1961.

Attest:

FELTON M. JOHNSTON, *Secretary*.

[H.R. 3024, 87th Cong., 1st sess.]

A BILL To amend the Act of January 2, 1951, prohibiting the transportation of gambling devices in interstate and foreign commerce

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That section 1(a) (2) of the Act of January 2, 1951 (64 Stat. 1134; 15 U.S.C. 1171), is amended to read as follows:

"(2) any other machine or mechanical device (including, but not limited to, roulette wheels and similar devices) designed and manufactured primarily for use in connection with gambling; and (A) which when operated may deliver, as the result of the application of an element of chance, any money or property, or (B) by the operation of which a person may become entitled

to receive, as the result of the application of an element of chance, any money or property, provided that the provisions of this subsection shall not apply to parimutuel betting equipment or materials used or designed for use at racetracks where betting is legal under applicable State laws; or".

SEC. 2. Section 1 of such Act is further amended by adding thereto the following subsections:

"(d) The term 'interstate commerce' includes commerce between one State, possession, or the District of Columbia and another State, possession, or the District of Columbia.

"(e) The term 'foreign commerce' includes commerce with a foreign country.

"(f) The term 'intrastate commerce' includes commerce wholly within one State, the District of Columbia, or possession of the United States."

SEC. 3. The first paragraph of section 2 of such Act is amended to read as follows:

"It shall be unlawful knowingly to transport any gambling device in interstate or foreign commerce: *Provided*, That this section shall not apply to transportation of any gambling device to a place in any State which has enacted a law providing for the exemption of such State from the provisions of this section, or to a place in any subdivision of a State if the State in which such subdivision is located has enacted a law providing for the exemption of such subdivision from the provisions of this section".

SEC. 4. Section 3 of such Act is amended to read as follows:

"Sec. 3. (a) It shall be unlawful for any person during any calendar year to engage in the business of manufacturing, repairing, reconditioning, dealing in, or operating any gambling device if in such business he buys or receives any such device knowing that it has been transported in interstate or foreign commerce, or sells, ships, or delivers such device in interstate or foreign commerce, or sells, ships, or delivers such device knowing that it will be introduced into interstate or foreign commerce, unless such person shall, during the month prior to engaging in such business in that year, register with the Attorney General of the United States his name and trade name and the address of each of his places of business, designating his principal place of business within the United States.

"(b) Every person required to register under the provisions of this Act shall maintain an inventory record of all gambling devices owned, possessed, or in his custody as of the close of each calendar month. The record shall show the individual identifying mark and serial number of each assembled gambling device and the quantity, catalog listing, and description of each separate subassembly or essential part, together with the location of each item listed thereon.

"(c) Every person required to register under the provisions of this Act shall maintain for each place of business a record for each calendar month of all gambling devices sold, delivered, or shipped in intrastate, interstate, or foreign commerce. The record of sales, deliveries, and shipments for each place of business shall show the individual identifying mark and serial number of each assembled gambling device and the quantity, catalog listing, and description of each separate subassembly or essential part sold, delivered, or shipped together with the name and address of the buyer and consignee thereof and the name and address of the carrier.

"(d) Every person required to register under the provisions of this Act shall maintain for each place of business a record for each calendar month of all gambling devices manufactured, purchased, or otherwise acquired. This record shall show the individual identifying mark and serial number of each assembled gambling device and the quantity, catalog listing, and description of each separate subassembly or essential part, manufactured, purchased, or otherwise acquired together with the name and address of the person from whom the device was purchased or acquired and the name and address of the carrier.

"(e) Every manufacturer required to register shall number serially each assembled or partially assembled gambling device which is to be sold, shipped, or delivered, and shall stamp on the outside front of each such assembled or partially assembled gambling device so as to be clearly visible the number of the device, the name of the manufacturer, and the date of manufacture. And every person required to register under the provisions of this Act shall record the data herein designated in the records required to be kept.

"(f) Each record required to be maintained under the provisions of this Act shall be kept for a period of five years.



"(g) (1) It shall be unlawful for any person required to register under the provisions of this Act to sell, deliver, ship, or possess any gambling device which is not marked and numbered as required by this Act or for any person to remove, obliterate, or alter the manufacturer's name, the date of manufacture, or the serial number on any gambling device;

"(2) It shall be unlawful for any person knowingly to make or cause to be made, any false entry in any record required to be kept under this section; and

"(3) It shall be unlawful for any person who has failed to register as required by this Act or who has failed to maintain the records required by this Act to manufacture, recondition, repair, sell, deliver, ship, or possess any gambling device.

"(h) Agents of the Federal Bureau of Investigation shall, at the principal place of business within the United States of any person required to register by this Act, at all reasonable times have access to and the right to copy any of the records required to be kept by this Act, and in case of refusal by any person registered under this Act to allow inspection and copying of the records required to be kept, the United States district court where the principal place of business is located shall have jurisdiction to issue an appropriate order compelling production.

"(i) No person shall be excused from maintaining the records designated herein, producing the same or testifying before any grand jury or court of the United States with respect thereto for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a criminal penalty or forfeiture. But upon asserting the privilege against self-incrimination any natural person may be required to open the records designated herein to inspection or to testify before any grand jury or court of the United States with respect thereto: Provided, That no such person shall be criminally prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing disclosed as a result of the inspection of such records or testimony with respect thereto. No witness shall be exempt under this section from prosecution for perjury or contempt committed while giving testimony or producing evidence under compulsion as provided in this Act.

"(j) The Attorney General is authorized and directed to make and enforce such regulations as may in his judgment be necessary to carry out the purposes of this Act and the breach of any of such regulations shall be punishable as provided in section 6 of this Act."

SEC. 5. This Act shall take effect on the sixtieth day after the date of its enactment.

[H.R. 8410, 87th Cong., 1st sess.]

A BILL To amend the Act of January 2, 1951, prohibiting the transportation of gambling devices in interstate and foreign commerce

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That section 1(a) (2) of the Act of January 2, 1951 (64 Stat. 1134; 15 U.S.C. 1171), is amended to read as follows:

"(2) any other machine or mechanical device (including, but not limited to, roulette wheels and similar devices) designed and manufactured primarily for use in connection with gambling, and (A) which when operated may deliver, as the result of the application of an element of chance, any money or property, or (B) by the operation of which a person may become entitled to receive, as the result of the application of an element of chance, any money or property, provided that the provisions of this subsection shall not apply to parimutuel or other betting equipment or materials used or designed for use at racetracks or other licensed gambling establishments where betting is legal under applicable State laws; or"

SEC. 2. Section 1 of such Act is further amended by adding thereto the following subsections:

"(d) The term 'interstate commerce' includes commerce between one State, possession, or the District of Columbia and other State, possession, or the District of Columbia.

"(e) The term 'foreign commerce' includes commerce with a foreign country.

"(f) The term 'intrastate commerce' includes commerce wholly within one State, the District of Columbia, or possession of the United States."

SEC. 3. Section 3 of such Act is amended to read as follows:

"SEC. 3. (a) It shall be unlawful for any person during any calendar year to engage in the business of manufacturing, repairing, reconditioning, dealing



in, or operating any gambling device if in such business he buys or receives any such device knowing that it has been transported in interstate or foreign commerce, or sells, ships, or delivers such device in interstate or foreign commerce, or sells, ships, or delivers such device knowing that it will be introduced into interstate or foreign commerce, unless such person shall, during the month prior to engaging in such business in that year, register with the Attorney General of the United States his name and trade name and the address of each of his places of business, designating his principal place of business within the United States.

"(b) Every persons required to register under the provisions of this Act shall maintain an inventory record of all gambling devices owned, possessed, or in his custody as of the close of each calendar month. The record shall show the individual identifying mark and serial number of each assembled gambling device and the quantity, catalog listing, and description of each separate subassembly or essential part, together with the location of each item listed thereon.

"(c) Every person required to register under the provisions of this Act shall maintain for each place of business a record for each calendar month of all gambling devices sold, delivered, or shipped in intrastate, interstate, or foreign commerce. The record of sales, deliveries, and shipments for each place of business shall show the individual identifying mark and serial number of each assembled gambling device and the quantity, catalog listing, and the description of each separate subassembly or essential part sold, delivered, or shipped together with the name and address of the buyer and consignee thereof and the name and address of the carrier.

"(d) Every person required to register under the provisions of this Act shall maintain for each place of business a record for each calendar month of all gambling devices manufactured, purchased, or otherwise acquired. This record shall show the individual identifying mark and serial number of each assembled gambling device and the quantity, catalog listing, and description of each separate subassembly or essential part, manufactured, purchased, or otherwise acquired together with the name and address of the person from whom the device was purchased or acquired and the name and address of the carrier.

"(e) Every manufacturer required to register shall number seriatim each assembled or partially assembled gambling device which is to be sold, shipped, or delivered, and shall stamp on the outside front of each such assembled or partially assembled gambling device so as to be clearly visible the number of the device, the name of the manufacturer, and the date of manufacture. And every person required to register under the provisions of this Act shall record the data herein designated in the records required to be kept.

"(f) Each record required to be maintained under the provisions of this Act shall be kept for a period of five years.

"(g) (1) It shall be unlawful for any person required to register under the provisions of this Act to sell, deliver, ship, or possess any gambling device which is not marked and numbered as required by this Act or for any person to remove, obliterate, or alter the manufacturer's name, the date of manufacture, or the serial number on any gambling device:

"(2) It shall be unlawful for any person knowingly to make or cause to be made, any false entry in any record required to be kept under this section; and

"(3) It shall be unlawful for any person who has failed to register as required by this Act or who has failed to maintain the records required by this Act to manufacture, recondition, repair, sell, deliver, ship, or possess any gambling device.

"(h) Agents of the Federal Bureau of Investigation shall, at the principal place of business within the United States of any person required to register by this Act, at all reasonable times have access to and the right to copy any of the records required to be kept by this Act, and in case of refusal by any person registered under this Act to allow inspection and copying of the records required to be kept, the United States district court where the principal place of business is located shall have jurisdiction to issue an appropriate order compelling production.

"(i) No person shall be excused from maintaining the records designated herein, producing the same of testifying before any grand jury or court of the United States with respect thereto for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a criminal penalty or forfeiture. But upon asserting the



privilege against self-incrimination any natural person may be required to open the records designated herein to inspection or to testify before any grand jury or court of the United States with respect thereto: *Provided*, That no such person shall be criminally prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing disclosed as a result of the inspection of such records or testimony with respect thereto. No witness shall be exempt under this section from prosecution for perjury or contempt committed while giving testimony or producing evidence under compulsion as provided in this Act.

"(j) The Attorney General is authorized and directed to make and enforce such regulations as may in his judgment be necessary to carry out the purposes of this Act and the breach of any of such regulations shall be punishable as provided in section 6 of this Act."

SEC. 4. This Act shall take effect on the sixtieth day after the date of its enactment.

OFFICE OF THE ATTORNEY GENERAL,  
Washington, D.C., April 6, 1961.

HON. OREN HARRIS,  
*Chairman, Committee on Interstate and Foreign Commerce,*  
*House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice concerning the bill H.R. 3024, to amend the act of January 2, 1951, prohibiting the transportation of gambling devices in interstate and foreign commerce.

H.R. 3024 was introduced at the request of the Department of Justice prior to the change of administration. I now reaffirm the support of this Department for the bill.

In 1951 Congress passed the Johnson Act (64 Stat. 1134; 15 U.S.C. 1171-1177), which in general forbids the interstate transportation of any "gambling device" and requires manufacturers of and dealers in gambling devices to register annually with the Attorney General.

Experience with the enforcement of this act has demonstrated a need for its amendment in several respects. H.R. 3024 would accomplish these changes. It would broaden the definition of "gambling device" so that not only the slot machine would be covered but also additional types of machines and mechanical devices designed and manufactured primarily for use in connection with gambling.

The proposal would also enlarge and more clearly define the categories of persons to whom the registration and filing provisions apply. It would require the maintenance of detailed records with respect to the acquisition and disposition of gambling devices, with provision for inspection and copying of such records by the Federal Bureau of Investigation.

Provision is made in the bill for the granting of immunity to persons who assert their constitutional privilege against self-incrimination with regard to the maintenance of the required records or testifying before a grand jury or court of the United States. Thus, our enforcement authorities would be able to compel the disclosure by underlings of information necessary for reaching the upper echelons of the crime syndicates.

Finally, the bill would extend the scope of the act to apply to the transportation of gambling devices in foreign commerce; at present it applies only to the interstate transportation of such devices. The racketeers have offset to a large extent the restrictions on the interstate transportation of gambling devices by developing foreign markets. The outlawing of such shipments would materially assist in the curbing of such activities.

I strongly urge that the committee report favorably on this corrective legislation and I look forward to its early enactment.

The Bureau of the Budget has advised that there is no objection to the submission of this report from the standpoint of the administration's program.

Sincerely,

(Signed) ROBERT F. KENNEDY, *Attorney General.*



## GAMBLING DEVICES

EXECUTIVE OFFICE OF THE PRESIDENT,  
BUREAU OF THE BUDGET,  
Washington, D.C., April 4, 1961.

HON. OREN HARRIS,  
Chairman, Committee on Interstate and Foreign Commerce,  
House of Representatives, Washington, D.C.

MY DEAR MR. CHAIRMAN: This is in reply to your letter of February 9, 1961, requesting the views of the Bureau of the Budget with respect to H.R. 3024, a bill which would prohibit the transportation of gambling devices in interstate and foreign commerce.

This bill is a part of the program directed against organized crime transmitted by the Attorney General.

Two minor editorial corrections are recommended: The word "included" at line 13 of page 2 apparently should be "includes" and the word "registered" at line 15 of page 4 should be "register".

Enactment of this legislation would be consistent with the administration's objectives, and the Bureau of the Budget therefore favors its enactment.

Sincerely yours,

(Signed) PHILLIP S. HUGHES,  
Assistant Director for Legislative Reference.

THE SECRETARY OF THE TREASURY,  
Washington, May 2, 1961.

HON. OREN HARRIS  
Chairman, Committee on Interstate and Foreign Commerce,  
House of Representatives, Washington, D.C.

MY DEAR MR. CHAIRMAN: Reference is made to your letter requesting the views of this Department on H.R. 3024, to amend the act of January 2, 1951, prohibiting the transportation of gambling devices in interstate and foreign commerce.

The act of January 2, 1951, forbids the interstate transportation of any gambling device and requires manufacturers of and dealers in gambling devices to register annually with the Attorney General. The proposed legislation would amend that act to (1) broaden the definition of "gambling devices", (2) enlarge the category of persons required to register annually with the Attorney General, and (3) extend the scope of the act to apply to the transportation of gambling devices in foreign commerce.

Since the proposed legislation relates to matters primarily within the jurisdiction of the Department of Justice, the Treasury Department has no recommendations to make on the merits of the bill.

The Department has been advised by the Bureau of the Budget that there is no objection from the standpoint of the administration's program to the submission of this report to your committee.

Very truly yours,

(Signed) ROBERT H. KNIGHT,  
Acting Secretary of the Treasury.

THE SECRETARY OF COMMERCE,  
Washington, April 7, 1961.

HON. OREN HARRIS,  
Chairman, Committee on Interstate and Foreign Commerce,  
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This letter is in reply to your request dated February 9, 1961, for the views of this Department with respect to H.R. 3024, a bill to amend the act of January 2, 1951, prohibiting the transportation of gambling devices in interstate and foreign commerce.

Section 1 of the act of January 2, 1951, specifically controls the transportation in interstate and foreign commerce of slot machines. If enacted, H.R. 3024 would extend the controls to cover roulette wheels and similar devices designed and manufactured primarily for use in connection with gambling. Additional recordkeeping and reporting requirements would be imposed on persons in the businesses of manufacturing, repairing, reconditioning, dealing in or operating

gambling devices, and it would be unlawful to fail to comply. Agents of the Federal Bureau of Investigation would be given access to such records.

While the Department of Commerce is in sympathy with the objective of the proposed legislation, to prohibit the transportation of gambling devices in interstate and foreign commerce, analysis and administration of the measure are felt to be primarily within the province of the Department of Justice, and we would defer to the views of that Department.

The Bureau of the Budget advised there would be no objection to the submission of this report from the standpoint of the administration's program.

Sincerely yours,

(Signed) EDWARD GUDEMAN, *Under Secretary of Commerce.*

DEPARTMENT OF STATE,  
Washington, March 13, 1961.

HON. OREN HARRIS,  
*Chairman, Committee on Interstate and Foreign Commerce,  
House of Representatives.*

DEAR MR. CHAIRMAN: I have received your letter of February 9, 1961, transmitting for the comments of the Department a copy of H.R. 3024, a bill to amend the act of January 2, 1951, prohibiting the transportation of gambling devices in interstate and foreign commerce.

The Department appreciates the opportunity to comment on H.R. 3024. However, it perceives no substantial foreign policy implications in the bill and accordingly makes no recommendation regarding the desirability of its enactment.

The Department has been informed by the Bureau of the Budget that enactment of this legislation would be consistent with the administration's objectives.

Sincerely yours,

(Signed) BROOKS HAYS, *Assistant Secretary*  
(For the Secretary of State).

We are pleased to welcome the Attorney General of the United States to the committee this morning in support of this legislation. Mr. Kennedy, we are glad to have your appearance and shall be glad to have your testimony at this time.

#### STATEMENT OF HON. ROBERT F. KENNEDY, ATTORNEY GENERAL, DEPARTMENT OF JUSTICE

MR. KENNEDY. Thank you, Mr. Chairman.

Mr. Chairman, I appreciate the opportunity to appear here today and testify about a bill which we regard as extremely important. S. 1658 is one of the eight bills which we submitted last year to enable the Federal Government to take more effective action against organized crime and racketeering. H.R. 3024 was introduced in the House as a part of this program. It is identical to S. 1658 except for Senate amendments. H.R. 8410 is identical with S. 1658.

In the last session, Congress passed five of our eight proposals, relative to organized criminal activity. I can report to you today that three of the five had an immediate effect in reducing gambling profits. The evidence, as I am sure you are well aware, shows clearly that the immense profits of gambling pay the freight for the more sinister activities of organized crime—such as narcotics and prostitution. The main purpose of the bills which Congress enacted the last session was to reduce gambling income as a first major step toward cutting off the funds which are now being used to finance organized crime and, I might add, to corrupt public officials.

The new laws, which the President signed on September 13, have resulted in a curtailment of shutting down of wire services furnish-



ing information which the bookies, sports pool betting, and layoff operators must have to operate on a bigtime scale.

I want to emphasize that S. 1658—like the bills enacted last session—is aimed at gambling profits and is needed as a vital part of the Federal Government's effort to hit gambling profits. We have made a dent in gambling income. This bill will help us to go further.

These enormous profits, estimated in the hundreds of millions annually, have attracted crime syndicates to gambling. Some have become so rich and powerful that they have outgrown local authority. There has been collusion between some public officials and these syndicates. Coercion has been used against owners of legitimate establishments to have syndicate gambling devices on the premises.

The present law—the Johnson Act—does not give us the weapons to prevent such activities and further cut the profits. Passed in 1951, this act was designed to prevent the shipment of slot machines and other gambling devices in interstate commerce and by so doing lessen the revenue accruing to interstate crime syndicates. It also was designed to aid and assist the States in making the possession, sale, or use of gambling devices illegal.

Eleven years of experience in enforcement of this act has revealed serious flaws and loopholes which require major revision. The hearings of the Select Committee on Improper Practices in the Labor and Management Field established that the ingenuity of the gamblers has proved more than equal to the Johnson Act. The time has come to tighten the law to cope with new devices not covered by the Johnson Act but which are clearly used for gambling.

Testimony before the Select Committee established that many of these machines appear to be amusement type games but are really subterfuge devices. They are not controlled by the Johnson Act because they are not coin operated, do not pay off directly, or because they have no drum or reel as in conventional slot machines. The machines are so set that they can be "cleared" of the accumulated "free game" credits and by means of a meter record the number of "free games" so cleared. Payment then can be made by the owner or his agent.

The present definition does not cover roulette wheels or any of the other devices common to gambling casinos. Logically there is no reason why such devices should not be included within the statute.

Some "pinball" machines now in use afford players an opportunity to register great numbers of free games and on which they can manipulate odds and numbers of free games to be scored. If certain combinations are achieved, free games can be played off or eliminated from the register by pressing a button or lever. The payoff is then made indirectly.

It should be made clear that S. 1658 is not intended to cover the ordinary pinball game played for amusement only. It is our belief that devices awarding a limited number of free plays which must be played off, which cannot be paid off, and which are not designed or manufactured for use in connection with gambling, are not included in this proposal.

S. 1658 is intended to prevent interstate shipment of devices able to record as many as 999 free games or which provide for free plays to be eliminated by some method other than playing off the free games.



Counting devices in these machines determine the number of free games which the owner has paid off.

The proposed amendment to the Johnson Act broadens the definition to include any device designed and manufactured primarily for use in connection with gambling which delivers money or property directly or indirectly. Exceptions have been provided from this definition for parimutuel equipment and by Senate amendments for other betting equipment or materials used or designed for use at race-tracks or other licensed gambling establishments where betting is legal under State laws. The Department of Justice has no objection to the Senate amendments.

As introduced, S. 1658 would have prohibited shipment of these machines in foreign commerce. The Senate deleted this provision so as to provide an exemption for the transportation of gambling devices in foreign commerce. The Department of Justice has no objection to this change.

New registration provisions would require "any person" engaged in business involving gambling devices and knowing they have been transported in interstate commerce, to register with the Attorney General. This is broader wording than in the Johnson Act and requires registration of every person dealing in gambling devices affecting interstate commerce. Other provisions in S. 1658 make registration requirements clearer, more precise, and easier to comply with.

Under present law only an inventory and record of sales or deliveries must be filed with the Attorney General. S. 1658 expands this to require that records be maintained of all gambling devices manufactured, purchased, or otherwise acquired. Experience has shown that without information as to the acquisition of gambling devices, the accuracy of the information furnished to us cannot be verified by the records themselves.

Other language emphasizes that persons subject to the act must report not only those devices which they hold for sale, but those which are leased and operated at other locations. This would include all those placed for repair, modification, or storage.

S. 1658 sets up a new numbering system for these gambling devices. Under present law more than one person may number the machine and it is impossible to trace the origin of machines, to ascertain when a particular device was manufactured, or to follow its chain of ownership. Under our proposal, one number, as well as the name of the manufacturer and the date of manufacture, would be stamped on the front of each device. This information would serve thereafter to identify that device wherever it might be found.

S. 1658 requires records to be kept on the premises of the registrants and provides for inspection of the records by agents of the Federal Bureau of Investigation. Production of these records may be compelled and a grant of immunity given if the privilege against self-incrimination is asserted.

This bill is a complete revision of sections 1 and 3 of the Johnson Act. We believe it will revitalize law enforcement in this area. We believe it will effectively curtail the movement of gambling devices in interstate commerce, and be an important factor in cutting organized crime down to size.

Thank you, Mr. Chairman.

The CHAIRMAN. Does that conclude your statement?

Mr. KENNEDY. It does, Mr. Chairman.

The CHAIRMAN. Mr. Williams, any questions?

Mr. WILLIAMS. Not at the moment, I don't believe, Mr. Chairman.

The CHAIRMAN. Mr. Schenck?

Mr. SCHENCK. Mr. Chairman, I appreciate the Attorney General's testimony and commend him for his efforts in this matter. I am very much interested in this and am sympathetic to the purposes of this legislation. As I understand it, Mr. Attorney General, if the device is manufactured and used within the boundaries of the State, then it is not reached by this legislation.

Mr. KENNEDY. It is not reached unless it comes from outside the State. If the machine has come from outside the State and goes into interstate commerce, then the recipient of the machine must register. All he has to do is to furnish his name, address, and place of business to the Department of Justice. The individual who sends a machine manufactured primarily for gambling in interstate commerce must furnish the same information. If the machine is an ordinary pinball machine, Congressman, which is for amusement purposes only, then of course no registration is required.

Mr. SCHENCK. The question I had in mind, Mr. Attorney General, was if the machine is manufactured within a State and is used within that State, although it is a gambling machine, it is not reached by this legislation?

Mr. KENNEDY. That is correct.

Mr. SCHENCK. In your judgment would it be likely that there would be a considerable amount of such manufacturing and use within individual States—be encouraged to develop within the individual States?

Mr. KENNEDY. I doubt if a great deal of that will go on, Congressman.

Mr. SCHENCK. And that would then require State legislation within the State?

Mr. KENNEDY. Yes, and law enforcement as well as legislation. In most communities the machines we are trying to cover are illegal and could be touched by local and State statutes.

Mr. SCHENCK. Thank you very much.

The CHAIRMAN. Mr. Roberts?

Mr. ROBERTS. On page 3 of the Attorney General's statement you say:

S. 1658 is intended to prevent interstate shipment of devices able to record as many as 999 free games or which provide for free plays to be eliminated by some method other than playing off the free games.

Why is that particular figure important in the situation?

Mr. KENNEDY. The 999 is not particularly important except to show what this amounts to. This is a far more profitable operation, Congressman, than the "one-armed bandit" used to be. You can start putting dimes in and without shooting off one ball you can lose \$50 or \$60. You can go in and change the odds by putting more money in, for instance. You can get extra balls by putting more money in, therefore having a greater chance of winning.



When I was counsel of the McClellan committee, we went into a situation in Lake County, Ind., where two manufacturers of these machines over a period of just a few years made some \$10 million. These are very profitable operations now. The machine shows that if you were playing with dimes you could run up to 999 free games and could make an awful lot of money. You could make thousands of dollars if you hit it right. You can change the odds so that you can make more. That is the purpose of showing the fact that you can run up the total as high as 999.

MR. ROBERTS. I am sympathetic with the legislation, but I was just wondering, if you eliminate this particular feature of the playing, whether they would not be able to hit on some other combination that would be just as useful to them.

MR. KENNEDY. We feel this is a possibility and is why we suggest in legislation that if the machine is manufactured primarily for the use of gambling, that it be covered by the statute. If they change the method of operating, as they did after the passage of the Johnson Act, then it is still going to be covered if it is used primarily for gambling.

MR. ROBERTS. That is all I have, Mr. Chairman. Thank you.

THE CHAIRMAN. Mr. Younger?

MR. YOUNGER. Thank you, Mr. Chairman. In regard to your statement, Mr. Attorney General, on page 4, you agree with the amended passed bill of the Senate which permits transportation in foreign commerce. My question is, How will you protect the machine or the operator in Chicago who is shipping in foreign commerce out of New York? It has to first go into interstate commerce. How are you going to prevent somebody in New York from picking it up?

MR. KENNEDY. I think it is clearly indicated when it comes out of Chicago that it is going to be sent overseas.

MR. YOUNGER. I know, but what is to prevent somebody from New York picking it up and not putting it into foreign commerce?

MR. KENNEDY. Then, of course, they are liable under the law, and if the manufacturer sends it out with that in mind, that it is going to stay within the country, then he is going to be liable under this act.

MR. YOUNGER. The act really covers that?

MR. KENNEDY. Yes.

MR. YOUNGER. The intent?

MR. KENNEDY. That is correct.

MR. YOUNGER. That is all, Mr. Chairman.

THE CHAIRMAN. Mr. Moulder?

MR. MOULDER. Thank you, Mr. Chairman. I wish to congratulate you, Mr. Attorney General, for the hard-hitting, aggressive fight that you are making against organized crime and I feel that this proposed legislation is necessary to assist you in that fight.

MR. KENNEDY. Thank you, Mr. Congressman.

MR. MOULDER. I also wish to commend you for the fine statement you made in explanation of the proposed legislation. I wish to ask this question: Do you feel that the proposed bill, as passed by the Senate or the one pending before this committee, is intended to cover only mechanical devices? It does not cover printed devices?

MR. KENNEDY. No; it does not.

Mr. MOULDER. Such as playing cards or other playing materials which are not specifically designed for gambling purposes?

Mr. KENNEDY. It does not; no.

Mr. MOULDER. Thank you.

The CHAIRMAN. Mr. Glenn?

Mr. GLENN. Thank you, Mr. Chairman. Mr. Attorney General, do I understand there are two types of these pinball machines manufactured, one for amusement only and the other for gambling?

Mr. KENNEDY. Yes; there are.

Mr. GLENN. And your bill would not in any way affect those that are manufactured for amusement only?

Mr. KENNEDY. Mr. Rufus King, who is the head of the criminal section of the American Bar Association, and which association is supporting this bill, has some experience in this field and has the two kinds of machines here. He will, I am sure, give an exhibition to the committee, if you are interested, and show the two kinds of machines. That is up to the chairman.

However, there is a definite difference between machines used primarily for amusement and those used for gambling.

Mr. GLENN. Thank you very much. That is all, Mr. Chairman.

The CHAIRMAN. I might say, if the gentleman will permit, we do contemplate that this demonstration will be given a little later on; but I did want to give members an opportunity to ask such questions as they might desire of the Attorney General before he has to leave. Mr. Rogers?

Mr. ROGERS of Texas. Thank you, Mr. Chairman. Mr. Attorney General, just two questions at this time. With relation to Mr. Schenck's question about the delivery of the machine by way of interstate commerce into a given State, what provision is made or what is in your mind about subsequent transactions involving that machine that are in intrastate commerce?

Mr. KENNEDY. If a manufacturer makes a machine and sends it across State lines, he must register with the Department of Justice. He must send in his name, his address, and his place of business. The recipient of the machine must register because he knows or is aware of the fact that the machine came in interstate commerce. If he then sends that machine in intrastate—is that your question?

Mr. ROGERS of Texas. Yes.

Mr. KENNEDY. He then keeps a record of where he has sent it. If the second recipient of that machine is aware that the machine originally came from outside the State, he also must register with the Department of Justice. If he is unaware of that, and does not register, we will still have the name of the manufacturer and the number, and starting with the manufacturer, we can trace the machine to the first recipient and then trace it to the second recipient.

Mr. ROGERS of Texas. Your feeling is that once it is impressed with an interstate label, it never loses that?

Mr. KENNEDY. That is correct.

Mr. ROGERS of Texas. And you can trace it on?

Mr. KENNEDY. Yes. That is our purpose.

The CHAIRMAN. Will the gentleman permit an interruption?

Mr. ROGERS of Texas. Yes.



The CHAIRMAN. With the gentleman's permission, and the permission of the gentleman from Ohio, since Mr. Friedel has to attend another important meeting and he has two or three questions, would you permit him to ask those before he has to leave?

Mr. ROGERS of Texas. I will if you will settle with me later.

Mr. FRIEDEL. Thank you. Mr. Attorney General, I want to compliment you for trying to clear out racketeering and gambling, but there are a few things I would like to get clear in my mind. One is, on the first page of the bill where you use the words "element of chance," there might be part chance and there might be part skill. If there is any element of chance, does this make it illegal? I refer to line 10 on page 1, Senate bill 1658.

Mr. KENNEDY. I am reading from the definition:

Any other machine or mechanical device (including, but not limited to, roulette wheels and similar devices) designed and manufactured primarily for use in connection with gambling \* \* \*

I think that is the important phrase.

Mr. FRIEDEL (reading):

Which when operated may deliver, as the result of the application of an element of chance. \* \* \*

If there is any part skill to it would that be called illegal? There might be some element of chance and part skill.

Mr. KENNEDY. It has to have all of these factors, Congressman, manufactured primarily for gambling and which when operated may deliver, as the result of the application of an element of chance, any money or property. There may be some skill involved, but it is also as a result of the application of an element of chance. That is an important factor in the bill.

Mr. FRIEDEL. On page 6 of your bill, line 24 and line 25, it says:

The Attorney General is authorized and directed to make and enforce such regulations as may in his judgment be necessary \* \* \*

Are we to give you authority to say this is a gambling device or this is purely for amusement?

Mr. KENNEDY. Well, I think that that provision is necessary for the enforcement of the law, as to what regulations are going to be passed and as to whom exactly these regulations will be sent to, not the regulations as to where the registration will take place. Those kinds of regulations are what we have in mind.

Mr. FRIEDEL. How about when a machine is registered and they have to be repaired? Do they have to have them registered again?

Mr. KENNEDY. No. We change those regulations, Congressman. Under existing law, they have to furnish all that information to the Department of Justice. All they would have to do under S. 1658 is to send in their names and their addresses. Then they would have to keep records of all of this information themselves. When the Federal Bureau of Investigation wants to inspect the records, they would have to make those records available unless they want to plead the fifth amendment.

Mr. FRIEDEL. If a machine is used for amusement purposes only with no payoffs, it is not supposed to be covered in this bill. If, in your judgment, you ruled it as a gambling device, then automatically they cannot use it?

Mr. KENNEDY. No, the issue will be litigated in the courts. I mean I would be wrong if it was used for amusement purposes and I said it was for gambling reasons.

Mr. FRIEDEL. What would happen in a State like Maryland? I think there are four counties that have legalized machines. What would happen there? Would it affect them in any way?

Mr. KENNEDY. Yes. All of the pinball machines active in the four counties in Maryland where they are used for gambling purposes would be illegal.

Mr. FRIEDEL. What about the State legislation?

Mr. KENNEDY. The State of Maryland could pass a law making them legal.

Mr. FRIEDEL. They did pass a law.

Mr. KENNEDY. I understand it is the four counties that passed local legislation.

Mr. FRIEDEL. No, it passed the State legislature and some counties exempted themselves; but after they passed the legislation, each individual county had to pass an ordinance permitting gambling devices.

Mr. KENNEDY. We looked that up, Congressman, and, as I understand it, the law in the State of Maryland does not specifically and particularly make these devices legal. Under our interpretation, unless Maryland passes a law making these devices legal and permits them to operate as in the State of Nevada, then they would be illegal and their operation would be illegal.

Mr. FRIEDEL. If the State legislature did pass it, how would this bill affect Maryland?

Mr. KENNEDY. Then it is covered.

Mr. FRIEDEL. Then they are not affected?

Mr. KENNEDY. If you are correct in your interpretation of the law at the present time, then they have no problem.

Mr. FRIEDEL. The legislature did pass a law concerning these machines.

Mr. KENNEDY. If that is correct then they have no problem.

Mr. FRIEDEL. That is all, Mr. Chairman. I thank you. I am sorry I have to run.

The CHAIRMAN. Mr. Rogers of Texas?

Mr. ROGERS of Texas. Mr. Attorney General, in keeping with the last subject that was touched on by Mr. Friedel, in your exemptions in the first subsection as to parimutuels and other betting equipment, and materials—

Mr. KENNEDY. What line are you reading from now?

Mr. ROGERS of Texas. At the top of page 2 of S. 1658, the exemptions from your original subtitle.

Mr. KENNEDY. Yes.

Mr. ROGERS of Texas. I understand that to mean that in those States where they have legalized gambling this law would not apply?

Mr. KENNEDY. That is correct.

Mr. ROGERS of Texas. If a machine at this time was shipped from one State authorizing gambling to another State in which gambling was authorized there would be no limitation at all on that?

Mr. KENNEDY. That is correct. The law would apply, but there is an exemption for States which have authorized gambling.



Mr. ROGERS of Texas. Don't you think, Mr. Attorney General, it would be better if all of these devices were registered? Don't you think your job actually would be easier if all were registered, even though they were not prohibited in certain States?

Mr. KENNEDY. I think this gets into problems and difficulties as far as States rights are concerned, Congressman. Such registration would make it slightly easier, but I think we can work under this satisfactorily.

Mr. ROGERS of Texas. That is the thing that was in my mind, about the intrastate transactions, as to whether or not you are within the powers of the Federal Government when you impress the interstate identification on an object, even though that object ends up in a transaction solely in intrastate commerce. It would occur to me if you could do that, then you ought to be able to do this other.

Mr. KENNEDY. I think the Supreme Court has held that we have the authority to do this and can follow it through. That is why we feel it is covered in this legislation.

Mr. ROGERS of Texas. I would hope that you would give the Supreme Court a chance to follow this other through, because I think you are doing a grand job in this fight against crime. I want to commend you for it.

Mr. KENNEDY. Thank you very much.

Mr. ROGERS of Texas. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Devine?

Mr. DEVINE. Mr. Chairman, thank you. It has been some years, Mr. Kennedy, since I have been connected with your Department and have examined the interstate transportation legal interpretations. I was wondering; on page 4 you say the Department has no objection to the Senate amendment which excludes shipment in foreign commerce. I find it a little difficult to justify that exclusion on the basis that, say, one of these gambling devices is manufactured in Chicago and shipped to New York via the Canadian Railroad, which puts it in foreign commerce. Would your decisions, that you have examined, call this interstate, or would it fall into foreign commerce?

Mr. KENNEDY. I would call it interstate. It is going from one State to another, whether it goes out of the country or not.

Mr. DEVINE. Notwithstanding that fact?

Mr. KENNEDY. Yes.

Mr. DEVINE. All right. Say some of our local manufacturers, again using Chicago as an example, would create a subsidiary in Montreal and then ship into New York. Would it be excluded under that provision?

Mr. KENNEDY. Excuse me?

Mr. DEVINE. Say a Chicago manufacturer manufactures a gambling type of pinball device and creates a dummy corporation or a subsidiary in Montreal, Canada, manufactures the machine there, and ships it into New York.

Mr. KENNEDY. I think we would just have to inquire into the factual situation. If we made a determination that this was a subterfuge to ship into New York and evade the provisions of the act, we would take action.

Mr. DEVINE. That of course would put additional burdens on your Department.

Mr. KENNEDY. I understand that, but I think we can work with this, Congressman. It is not, perhaps, perfect legislation, but I think we can work with this.

Mr. DEVINE. You say you have no objection to the Senate amendment. Will it not be more workable without this amendment?

Mr. KENNEDY. There are certain advantages. There is some business done by manufacturers in the United States who send machines to countries wanting to receive them, offsetting that advantage for the economy of the country, and getting more dollars here in the United States—

Mr. DEVINE. You mean this whole thing might enter the Common Market picture?

Mr. KENNEDY. Yes. We are trying to do our bit over in the Department of Justice.

Mr. DEVINE. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Rhodes?

Mr. RHODES. Mr. Chairman, I want to commend the Attorney General for his efforts against organized crime in this country. My question at this time is: To what extent have you found that the amusement machines are used for gambling purposes, so-called amusement machines?

Mr. KENNEDY. They are not generally used for gambling purposes. Occasionally two people may play each other, but by and large the machines are not used for gambling purposes, and it obviously is not the kind of gambling we want to cover.

The CHAIRMAN. Mr. Nelsen?

Mr. NELSEN. No questions.

The CHAIRMAN. Mr. O'Brien?

Mr. O'BRIEN. No questions, Mr. Chairman.

The CHAIRMAN. Mr. Keith?

Mr. KEITH. Thank you, Mr. Chairman. Mr. Attorney General, as a Representative of Cape Cod, your summer home, I am very pleased to welcome you here today.

Mr. KENNEDY. Thank you, Congressman.

Mr. KEITH. I am glad to know that the legislation passed last year has been successful in inhibiting gambling activity and I wonder if you have had any cases actually in court under the provisions of the law passed last year?

Mr. KENNEDY. We made six arrests in New York about 2 weeks ago, Congressman. Complaints are coming into the Department of Justice and matters have been uncovered by the Federal Bureau of Investigation. The total now is into the hundreds. These matters are being looked into and determinations are being made whether further arrests and indictments are warranted. If so, they will be presented to the court.

We have found from our surveys across the country that the legislation passed by Congress in the last session put many of the big-time operators out of business, or restricted them to just a small percentage of the gambling they were doing a year ago.

For instance, last fall we found in many areas of the United States that the gambling on some of the major college and professional games was about 10 percent of what it had been the year before. I don't say this is going to remain at that, and gamblers might very well find ways



to circumvent the legislation passed in the last session of Congress; but it has been a step forward. We are going to have to watch the situation carefully. If we find that the legislation is being circumvented we want to come back and make that report to Congress. But within the 6-month period after the legislation was passed, it has had a very salutary effect.

We are making the effort with the Federal Bureau of Investigation, the Internal Revenue Department, the Bureau of Narcotics, and other investigative agencies. We are making a major effort on these bigtime operators and I think it is having some effect; but I don't think we will be able to tell for 4 or 5 years whether we have been able to really do anything in a major sense.

The head of the Royal Mounted Police in Canada announced recently that because of this effort and the steps taken by Congress, many of these bigtime operators were now moving into Canada. He felt that it was necessary for Canada to take some steps, and a Royal Commission has been appointed to make an investigation up there also.

I think we are just going to have to keep the pressure on. As I say, it is going to take at least 4 or 5 years to determine how effective it all has been.

Mr. KEITH. That is very encouraging. One other question: Has the Federal Government taken a position as to the propriety of gambling devices in areas where they have, in effect, jurisdiction? For example, in military establishments.

Mr. KENNEDY. Well, I don't believe we have, Congressman. At least there has been no discussion with me about it.

Mr. KEITH. No further questions, Mr. Chairman.

The CHAIRMAN. Mr. Moss?

Mr. MOSS. No questions, Mr. Chairman.

The CHAIRMAN. Mr. Curtin?

Mr. CURTIN. Thank you, Mr. Chairman. Mr. Attorney General, do I understand from your statement that S. 1658 is primarily directed toward the registration of certain types of pinball machines?

Mr. KENNEDY. That is correct.

Mr. CURTIN. And it is for the registration of pinball machines designed and manufactured primarily for use in connection with gambling; is that correct?

Mr. KENNEDY. That is correct.

Mr. CURTIN. And your department is going to determine whether any particular type of pinball machine is primarily designed for gambling?

Mr. KENNEDY. No. I think there are a number of ways that you could tell, as I set forth in my statement.

Mr. CURTIN. I followed your statement with attention, but isn't it possible for the proprietor of any store or any type of place to pay off on a pinball game regardless of the type of machine?

Mr. KENNEDY. For the most part, the machines we are talking about are not owned by the proprietor but are leased to him. The representative of the lessor comes by and makes collections every week. If there is a mechanism within the machine that makes a determination of how many free games have been paid off, if you have a button or a knob where all the free games can be released and you

collect your money, if those kinds of mechanisms are within the machine, that is an indication that it is a gambling machine.

If it doesn't have that kind of mechanism, even though it might have free games, we wouldn't consider it a gambling machine. If it has a mechanism where you can change the odds by putting more money in, or if it has a mechanism where you increase the number of balls that you can play with, these factors are what we would consider in determining whether it was a gambling mechanism or not.

Mr. CURTIN. I can understand that, and with that type of machine there is no problem, but how about the machine which hasn't any of those particular built-in devices, and yet the lessee of the machine may be instructed by the owner of the machine to pay off, assuming the player of that machine runs up a particular score, how are you going to reach that?

Mr. KENNEDY. I would say we wouldn't consider that a gambling machine. I think it would be almost impossible for the owner or the lessor to make that kind of arrangement. How could he tell if the money had been used to pay off the player of the game, rather than just stuck in the pocket of somebody?

Mr. CURTIN. I appreciate that would be difficult, but don't you think it might be better to have all of these pinball machines so registered?

Mr. KENNEDY. I do not, because I think you can really make a very clear determination as to which are gambling machines and which are pinball machines.

Mr. CURTIN. Thank you. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Dingell?

Mr. DINGELL. Thank you very much, Mr. Chairman. Mr. Attorney General, I want to commend you for a very fine and helpful statement to the committee this morning and also for your very vigorous efforts in this field which is very important in the public interest, as I am sure my colleagues will agree. Like yourself, I happen to be a member of the bar. I am, however, always very careful when I consider a piece of legislation which makes an action a crime. I would like to address myself to the point which was raised by my colleague, Mr. Curtin, because it appears that we are casting a very wide net in this bill.

You do state, however, that you seek to preserve the difference between a legitimate—I guess that would be the proper word—pinball machine which a citizen plays for recreational purposes, and a pinball machine in which there is an obvious gambling incentive by a mechanism which is essential to gambling by that machine.

In reading the bill I notice that you say down there at the bottom of the first page, and other pages too:

\* \* \* which when operated may deliver, as the result of the application of an element or chance, any money or property \* \* \*.

In your opinion do you sufficiently distinguish between the two types of pinball machines? In order to make the statute sufficiently definite to stand up under constitutional requirements and so that it would otherwise meet the test of good criminal legislation, it must be sufficiently definite. Can we distinguish between the two types of pinball machines?



Mr. KENNEDY. I believe we can, Congressman. The problem, of course, is that the Johnson Act was made so specific that within a year everybody got around it and it became meaningless. These machines now are the great sources of income and are the ones we are trying to cover. We think there are certain characteristics which distinguish gambling machines from the machines used for amusement.

I tried to give some explanation here of what the significant points are. It is significant if it runs up games and has a recording device within the machine. It is significant if you can change the odds on the machine. I think you will see this more clearly when Mr. King gives an explanation of the method of operation these machines have, whether you get the numbers across the line or up and down, whether you are going to get the numbers across like this, or whether you put in more money and get more balls.

With all of these things it is obviously a gambling type machine. I think that if you take the time to study the various kinds of machines, and I hope that his testimony will be helpful along those lines, you will see that there is a clear distinction between machines used for amusement purposes and those manufactured primarily for gambling.

The burden of proof in court is going to be on the United States. It is not going to be up to just the Attorney General to make the determination. We might bring a case, but ultimately it is going to be up to the courts to make a decision.

Mr. DINGELL. I note in the last section that you say:

The Attorney General is authorized and directed to make and enforce such regulations as may in his judgment be necessary to carry out the purposes of this act and the breach of any of such regulations shall be punishable as provided in section 6 of this act.

Can you tell us, Mr. Attorney General, whether violation of that section would be a misdemeanor, or a felony?

Mr. KENNEDY. The regulations, sir, would be just to make it easier to carry out the provisions of the act. We might find as we go along that it would be easier for us to have the manufacturers or the users of these machines who send this information to the Attorney General to send it some place else. It is all under the provisions of this act, and I would be glad to provide, at the time that we make up our regulations, copies to the members of this committee so that there is complete understanding of them.

Mr. DINGELL. Mr. Attorney General, I would have no interest in the regulations you would promulgate. The only thing I am trying to see is, are we delegating you the power to create felonies, or the power to create misdemeanors?

Mr. KENNEDY. I don't think you are doing that.

Mr. DINGELL. A violation of an internal revenue regulation, or a regulation generally under the statutes is a misdemeanor, is it not?

Mr. KENNEDY. You are making the decision yourselves, this committee and Congress, as to whether this bill should be enacted. Any regulations I recommend will have to be under the provisions of this bill. I can't make anything a misdemeanor or a felony which is not covered already by this act.

Mr. DINGELL. The only thing I was asking is what does section 6 provide? It says that the regulations shall be punishable as provided

in section 6 of the act and I was just wondering whether that was a felony or misdemeanor?

Mr. KENNEDY. If we make some regulations as to where the manufacturer is supposed to send this kind of information and the individual doesn't conform with that, then he would be punishable under this bill. However, I think it is clear in a bill of this kind, where regulations are going to be made under the act, that you cannot go beyond the power granted in the act.

Mr. DINGELL. Mr. Attorney General, there is another question I have to ask: Do you feel that it would be possible for this committee and the Congress to be more specific in enumerating the specific types of machines which would be considered to be violative of the statute? In other words, you have mentioned some of the distinguishing characteristics, the fact that you have drums in there that you can clear to make a payoff, and the fact that you can have devices within them by payment of money for changing odds, and so forth. Would that be wholesome to include more specific definition in the legislation.

Mr. KENNEDY. I would say, and I looked into this carefully, Congressman, it probably is going to be that within 12 months after you pass such a bill those involved in this business will think of a new way of handling it, just as they did after the Johnson Act. Within 12 months of the passage of the Johnson Act, and it was vigorously enforced initially, big-time operators thought of this kind of a machine.

If you specify according to how they are operating now, they will, in my judgment, within a year think of new ways to operate which would not be covered by the bill. I think the provision against machines made primarily for use in connection with gambling, with the burden of proof on the Government, will allow us to cover not only pinball machines, primarily used for gambling, but also to cover different kinds of machines that might be devised later.

It will be incumbent upon the Government to prove that a particular machine was manufactured primarily for the purpose of gambling. I think that is a heavy burden of proof and is a protection for the individual. But I think it is broad enough and has to be broad enough because the facts warrant it.

Mr. DINGELL. One last question: You have mentioned in your testimony this morning a number of devices that you feel do constitute gambling devices which would be violative of this bill if enacted. Would it be convenient for you to submit to this committee a further list of specific types of devices which you would feel would be violative of this, which would be helpful in establishing the legislative history of the bill?

Mr. KENNEDY. I would be glad to.

(The information referred to above appears on p. 27.)

Mr. DINGELL. Thank you very much.

The CHAIRMAN. Mr. Sibal?

Mr. SIBAL. Thank you, Mr. Chairman. Mr. Attorney General, we do not have the parent act before us, the Johnson Act. Do you know offhand what penalties are provided in that act?

Mr. KENNEDY. I do not, but I can find out.

It is \$5,000, 2 years, or both.



Mr. SIBAL. So then actually this legislation before us would have the penalties which any violator would be subjected to under the Johnson Act.

Mr. KENNEDY. That is correct.

Mr. SIBAL. Do you know whether or not in general the same manufacturing companies make both types of pinball machines? For example, are the gambling type and the nongambling type, as you explained it, essentially manufactured by the same people?

Mr. KENNEDY. Generally different.

Mr. SIBAL. Different?

Mr. KENNEDY. Yes, Congressman.

Mr. SIBAL. Have you made any determination on a technical basis as to whether or not any device could be manufactured, for example, within a State which could be attached at a relatively low cost, not that cost is such a big item here because of the amount of money involved in these gambling operations, to a nongambling type machine which would in effect create the same situation?

Mr. KENNEDY. We have tried to cover that in the act. The manufacturer of a piece of machinery manufactured for the purpose of gambling and the recipient of such machinery must keep records. That could be done. In any case, we hope the bill will cover that also. I think it is probably a greater problem as far as detection than when it is plainly a gambling machine.

Mr. SIBAL. What I had in mind, and it may not be a valid concern because I don't know the background of the way these things are made, was that perhaps a machine could be devised, a basic machine, in one State which would be shipped in interstate commerce but would not be in violation of this legislation, and something could be manufactured within a State at a relatively low cost which could be added which would give you the same situation without any tools to work with?

Mr. KENNEDY. I think you probably have the answer. Maybe that is going to be one of our great problems.

Mr. SIBAL. Thank you.

Mr. KENNEDY. I would think this will have to receive our attention. Thank you, Congressman.

The CHAIRMAN. Mr. Rogers?

Mr. ROGERS of Florida. Thank you, Mr. Chairman. Mr. Attorney General, I want to join with those who have commended you for the very fine job and the interest you are taking in doing something against this tremendous syndicated crime operation. In the bill am I correct in understanding that the manufacturer, as well as the operator who receives the instrument, both must send in the reports?

Mr. KENNEDY. That is correct.

Mr. ROGERS of Florida. So that you can trace from the beginning to the end of the entire travel?

Mr. KENNEDY. That is correct.

Mr. ROGERS of Florida. Will both be subject to prosecution then if they engage in the illegal shipment, or would it be just the manufacturer who initiates it?

Mr. KENNEDY. No, both.

Mr. ROGERS of Florida. Both would be subject to penalty?

Mr. KENNEDY. Yes, sir; if the recipient receives the machine knowing it has come in interstate commerce and does not register.

Mr. ROGERS of Florida. But there must be the intended knowledge there on the part of the recipient?

Mr. KENNEDY. That is right, and he must know that it came in interstate commerce and he must keep his records. S. 1658 is different from the Johnson Act in that he doesn't have to send that information in to the Department of Justice. All he has to do is keep a record of that and keep it for 5 years, available for the Federal Bureau of Investigation.

Mr. ROGERS of Florida. Thank you very much. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Dominick?

Mr. DOMINICK. Thank you, Mr. Chairman. I would like to go back to what Congressman Devine was talking about on this foreign commerce thing if I may a little. Do you have any idea of how much, or how many, or what proportion of the gambling machines are now shipped in from foreign countries?

Mr. KENNEDY. I do not. I can get that information for you, or at least whatever information we have along those lines, Congressman. I will furnish it to you.

(The information mentioned above appears on p. 27.)

Mr. DOMINICK. It just occurs to me that it would be awfully simple to have a great influx from foreign countries of these gambling devices almost overnight after this was passed if the foreign commerce end is left out of this bill, and I wondered in view of this, which is an obvious question, why the Department really has no objection to the change?

Mr. KENNEDY. The trade, of course, has been out of the country, from the United States to other countries, and that is primarily the reason we had no objection to the change. If we found that there was a possibility, and from our study there didn't appear to be, that these machines would be coming in from foreign countries, obviously it would cause us great concern.

The industry worldwide didn't appear to be pointed in that direction. There is a possibility that it might arise, Congressman, but our analysis indicated that the machines were being sent out of the United States. In addition, we believe the Johnson Act prohibits the importation of these machines. However, I would be glad to furnish you more information along those lines, whatever information we have. I think it is an important point.

Mr. DOMINICK. We shipped Lucky Luciano out, and we don't want him to come back in a new form.

Mr. KENNEDY. Yes, I agree. I will furnish you whatever information we have.

Mr. DOMINICK. Thank you, that is all.

(The information mentioned above appears on p. 27.)

The CHAIRMAN. Mr. Hemphill?

Mr. HEMPHILL. Thank you, Mr. Chairman. I have one question: On page 6 of each of these bills under section 3(i), you have a provision which reads as follows:

No person shall be excused from maintaining the records designated herein, producing the same or testifying before any grand jury or court of the United States with respect thereto for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to criminal penalty or forfeiture.



Is that constitutional? Doesn't that legislate away the provisions of the fifth amendment?

Mr. KENNEDY. No; that is the point we make, making it quite clear that an individual does not have to testify or does not have to produce any documents if he believes that by so doing he will incriminate himself.

Mr. HEMPHILL. And the provisions of the fifth amendment are definitely protected in this legislation?

Mr. KENNEDY. Specifically and particularly. Also, I might add on that, Congressman, it gives us the right to grant immunity to the individual. If he comes in and says, "I don't want to turn over these records that I have been keeping and I don't want to testify on where these machines have come from because it might tend to incriminate me," we then have the right to grant him immunity. We cannot thereafter prosecute him, but he must then come in and give us the information. This is a common immunity provision contained in a number of pieces of legislation.

Mr. HEMPHILL. Then would the accused under those circumstances have a right to demand the source of the information and the presentation of him as a witness before the accuser?

Mr. KENNEDY. All we would be doing would be trying to obtain information from him. We would ask him to produce his records, for instance. This is not unusual.

Mr. HEMPHILL. I understand that.

Mr. KENNEDY. The right to grant immunity under these circumstances is contained in a number of pieces of legislation. What he would do would be to appear before a grand jury, and after it was made clear to him and his attorney that anything he said could not be used against him, he would be required to answer any questions the grand jury saw fit to ask him.

Mr. HEMPHILL. But if that placed him in the position of being an accuser, would not the accused have the right to demand that he be faced with his accuser in person to testify?

Mr. KENNEDY. All you would be doing would be trying to get information from him. There wouldn't be anybody accusing him. It would not matter if somebody accused him, in any case, because he couldn't be prosecuted.

Mr. HEMPHILL. I am not talking about him being prosecuted. I am talking about the man who was prosecuted on his evidence. The man could be faced with him, could he not?

Mr. KENNEDY. If we indicated some other individual and we were going to use the testimony of the man to whom we granted immunity, or introduced documents that he had in possession, he would have to appear and testify and could be cross-examined.

Mr. HEMPHILL. Thank you very much. Thank you, Mr. Chairman.

Mr. KENNEDY. Thank you.

The CHAIRMAN. Mr. Moss?

Mr. MOSS. Mr. Attorney General, I would imagine that it is possible to modify one of these amusement-only type devices through the use of standard components not intended at the time of manufacture for incorporation in any gambling device. How do you reach the person who is called in and modifies such a device, putting on it a counter,

or a release lever, or any other feature which would finally produce a device that could be used for other than entertainment?

Mr. KENNEDY. I would say this: First, if such machinery came from outside the State it is covered by the act. As we say, "any other machine or mechanical device." It is not just these kinds of machines themselves, but includes mechanical devices. If they were going to put on a mechanical device and got that from outside the State, and it is a piece of gambling material and it came from outside the State, it would be covered and they would be in violation of the law. If they manufactured it within the State, as I think the Congressman suggested, and placed it in the machine and it was possible to place it in economically, I think we would have a greater problem.

Mr. Moss. But you feel if it is modified after having been shipped in interstate commerce, even though it was not shipped as a gambling device, and even though the components used in the modification were not manufactured for gambling devices, that you still would be able to get the person responsible under this language?

Mr. KENNEDY. You would have to repeat that, Congressman.

Mr. Moss. Where a machine was manufactured for amusement only, and therefore not registered, shipped in interstate commerce, and then modified with components not intended for gambling devices at the time of manufacture, would you be able to reach under this language the person who modified or the person who possessed it?

Mr. KENNEDY. No, neither one. We would be able to reach neither one. Do you mean that the component that they add, even though it was not manufactured as a gambling device, could still change an amusement machine into a gambling device?

Mr. Moss. I would imagine many of the components in these machines are standard. I don't know.

Mr. KENNEDY. Yes, but one problem in your statement is it would have to be manufactured initially as a piece of machinery used for gambling purposes in order to change an amusement device into a gambling machine.

Mr. Moss. The release lever is one of the characteristics of a gambling machine and some sort of counter.

Mr. KENNEDY. Yes. The drum, for instance, that would record the number of free games, would be clearly used for gambling purposes. I would say that this is an area, as I mentioned earlier, that could cause some problem. I think once again, as in all of these matters, the primary responsibility is going to be up to local law enforcement. We can be of some assistance, but we are not going to be able to do this job, or the job against organized crime, where you have a breakdown of local law enforcement or State law enforcement.

Mr. Moss. Do you think there is any language which might be recommended to reach the problem of modification which could be incorporated in this legislation?

Mr. KENNEDY. Let me study that, Congressman, and see if there is anything beyond what we suggested that we might add. May I write you a letter on that, and also you, Congressman Sibal?

Mr. Moss. Thank you.

The CHAIRMAN. Of course, Mr. Attorney General, you are testifying for the record here and anything that you submit in response to questions should be submitted for the record.



Mr. KENNEDY. Fine. I will be glad to do that, Mr. Chairman.  
(The letter referred to above follows:)

OFFICE OF THE ATTORNEY GENERAL,  
Washington, D.C., January 19, 1962.

HON. OREN HARRIS,  
Chairman, House Interstate and Foreign Commerce Committee,  
Washington, D.C.

DEAR CONGRESSMAN: During my testimony before your committee on amendments to the Johnson Act, I offered to make available to the committee further information.

You will recall that I was requested to furnish a list of specific types of devices which would be violative of the bill if enacted. Without furnishing an exhaustive list which might be construed to rule out other types of devices, I believe that the "joker", "pointmaker", and "in-line" machines are illustrative of the devices at which this bill is aimed.

The "joker" machines are old one-armed bandit slot machines which are not coin operated and which do not directly pay off in money or property. The number of free plays won are electrically recorded at another location in the establishment and paid off by the proprietor or his agent. The "pointmaker" is similar to a slot machine but is electrically operated, does not have a drum or reel, is not coin operated, and does not directly deliver any money or property. Payoffs are made by the proprietor of the establishment or his agent on the basis of the free games won and electrically recorded. The "in-line" machine is a gambling pinball device which records the win of the player by an electronic device which tabulates the number of free games awarded as a result of the play. The free games won are usually paid off by the proprietor of the machine or his agent at the rate charged for playing the machine. When payment is made, the free games recorded are eliminated from the machines by a button or "knock-off lever" which triggers an electrical circuit to record the number of free plays paid off. This tabulation of free plays paid off permits the operator of the establishment to receive credit for payoffs before any adjustment of the proceeds is made between the owner of the machine and the proprietor of the establishment in which the machine is located.

I was also asked the extent of importation or exportation of gambling machines. The importation of gambling devices as presently defined in the Johnson Act is prohibited. However, I am advised by the Department of Commerce that it does not have statistics on exports which would be useful in furnishing a meaningful answer to the question. The Department of Commerce does have information as to all coin-operated machines exported; but since these include many items such as parking meters, pay locks, amusement games found in penny arcades, and turnstiles, for your purposes this figure would not be useful. For your information, approximately 70 manufacturers and dealers are registered with the Department of Justice. These people are engaged, for the most part, in shipping gambling devices to Nevada and foreign countries.

Another area of questioning related to amusement games which in themselves do not come within the bill but, by some modification, after leaving the stream of interstate commerce, could be transformed into a mechanical device coming within the prohibitions of this bill. While I agree that this area may cause us some difficulty, I think it should be pointed out that such a modification is difficult and requires a knowledge of electronics which may not be readily available at the local level.

I believe that a device is subject to the provisions of this bill even though it takes the form of an amusement device at the time of manufacture if it is so designed and manufactured that it can be readily modified to serve as a gambling device after transportation in interstate commerce, but only if the Government can prove the device was designed and manufactured primarily for gambling purposes. In addition, the Johnson Act now defines as a gambling device "any subassembly or essential part intended to be used in connection with any such machine or mechanical device." Therefore, if a subassembly which is designed to convert an amusement device into a gambling device is transported in interstate commerce, we believe that the interstate transportation of such device constitutes a violation of the act.

I was also asked whether mechanical devices which shuffle cards and scramble dice are within the purview of the bill. With respect to those machines which shuffle a deck of cards in order to change the order of the cards to prepare them

for dealing the next hand, I do not consider that they are covered by the provisions of the bill. The shuffling of the cards is a preliminary step and after the machine has accomplished its purpose, no person is as yet entitled to receive any money or property. The cards must still be dealt and the game must still be played before there is an entitlement to any money or property.

With respect to the devices for scrambling dice, a more complicated problem is presented. Some of the machines are of relatively poor construction and quality whose primary purpose is use in novelty games used by children. These machines manufactured by companies whose sole interest is the sale of games to the general public are not manufactured primarily for use in gambling and are not within the scope of the bill. On the other hand, the more elaborate type of machine, sometimes called a bird cage, which is more durable and expensive, is used in casinos, clubs, and bars throughout the country for gambling. This type may well be within the purview of the bill. Each instance which comes to our attention will have to be given separate consideration based upon the facts of each case. It should be borne in mind that in order to prove a violation of the section, we will have to show that the manufacturer's purpose in designing and making the device is that it be used in gambling.

Sincerely,

ROBERT KENNEDY,  
*Attorney General.*

The CHAIRMAN. Mr. Williams?

Mr. WILLIAMS. General, I am sure that all of us applaud the fight that you are making against organized crime, and syndicated gambling. Obviously, it is impossible in the draft of legislation to limit it exclusively to syndicated or organized gambling.

I would like to know just how broad in its application you plan to use this measure? For instance, I will give a few hypothetical examples first. Does this cover the shipment of punchboards in interstate commerce. Would that be a gambling device?

Mr. KENNEDY. It does not. It is not a machine or a mechanical device.

Mr. WILLIAMS. In some of these small carnivals, and I presume some of the larger carnivals, that go about over the United States playing at fairs in both large and small towns, there are any number of devices used which result in the giving of prizes.

For instance, something as simple as a fellow putting you on a pair of scales and guessing your weight. If he does not guess within a certain number of pounds, you win a prize. In other cases they use wheels and if you guess the red, or the black, or what have you, you win a prize. If you miss your guess you lose.

Obviously, that is gambling equipment. Is it intended to prohibit the transportation by carnivals of that kind of equipment?

Mr. KENNEDY. For instance, I would question very much if the scale was designed and manufactured primarily in connection with gambling.

Mr. WILLIAMS. However, I believe that it goes so far as to say the use of this equipment in moving from State to State.

Mr. KENNEDY. Yes, but again, we are going to have to establish that it was manufactured—this is quite a burden on the Government—primarily for the purpose and use of gambling right from the beginning.

Mr. WILLIAMS. One other hypothetical example, and that is in the shipment of bingo equipment from State to State. I believe you have already indicated that printed matter is not subject to this legislation?

Mr. KENNEDY. May I just say that I think a good deal of printed material was covered, however, in the legislation that was passed last summer, of which you are aware.



Mr. WILLIAMS. However, this bingo equipment which is used for gambling purposes is about the same whether it is used in a casino or whether it is used in a church social, for instance. Is it intended that that equipment be prohibited from shipment in interstate commerce?

Mr. KENNEDY. It is not covered by this bill.

Mr. WILLIAMS. Well, I am wondering isn't that considered a gambling device? Isn't it manufactured for the purpose of gambling?

Mr. KENNEDY. It is not a machine or a mechanical device.

Mr. WILLIAMS. I am talking about the basket that holds the little balls that they turn and draw the balls from. Obviously that is a mechanical device and obviously it would come within the purview or the definition that is carried in subparagraph (2) of this bill. Would the Attorney General have a right to exempt that type of equipment?

Mr. KENNEDY. I don't think so. I don't think we have the right to exempt that kind of equipment. I think that that might very well be covered. That kind of equipment would probably be covered and it would be a determination made by the Department of Justice as to whether this is a prosecution that Congress had in mind and intended. I think some bingo, I might say, has been used and controlled by some of the big operators in the United States and is very profitable and lucrative. This bill is not aimed at that.

Mr. WILLIAMS. Of course the legislation cannot distinguish between—

Mr. KENNEDY. No, absolutely. I agree.

Mr. WILLIAMS (continuing). That which would go to professional gambling and that which would go to an officer's club, for instance.

Mr. KENNEDY. I agree.

Mr. WILLIAMS. That is all.

The CHAIRMAN. Mr. Attorney General, pursuing this line of questioning a little further and in order to make the record as clear on this as we can, may I ask you if your primary objective here is to get at syndicated gambling and organized crime?

Mr. KENNEDY. That is correct.

The CHAIRMAN. In other words, it is not your primary objective here to get at what would be considered local law violations or gambling in individual places? You leave that to the local police enforcing officials?

Mr. KENNEDY. Yes. We would hope by the passage of this legislation that we would be of some assistance and help to local and State law enforcement, working closely in conjunction with them.

The CHAIRMAN. I want to applaud, as other members have indicated, your objectives and what you intend to do here and the fact that you do have in mind supplementing the work of local law enforcement activities. But I also want to raise the question as to any demarcation. I agree with Mr. Williams that the law is applicable to all those that are affected, regardless of whether they are small or large, as it should be.

Mr. KENNEDY. Yes, sir.

The CHAIRMAN. However, your explanation seems to point at certain objectives, but it appears to me it is very difficult to follow the broad language used in the bill to find out just where that demarcation

might be. As I understand it, you do not intend it to include bingo games.

Mr. KENNEDY. That is correct.

The CHAIRMAN. But Mr. Williams has just given an example of how it would affect a certain type of bingo operation.

Mr. KENNEDY. I would think, of course, with respect to the manufacturing of this type of machine, it would be very easy to do it within a State. If an individual was going to operate a bingo game, he does not really have to have a very complicated device to mix the numbers up.

The CHAIRMAN. Of course, it would be very easy to fix up a gadget with a crank and let the numbers fall out, or to reach with the hand and pick out a number as far as that is concerned. But that is beyond the scope of what we are trying to reach by this legislation.

Mr. KENNEDY. We are interested, as you pointed out, Mr. Chairman, in the bigtime operators.

The CHAIRMAN. Is dice included in this?

Mr. KENNEDY. No, it is not.

The CHAIRMAN. Playing cards of any kind?

Mr. KENNEDY. They are not.

The CHAIRMAN. What about mechanical devices that scramble dice and shuffle cards; are they gambling devices? Are they included in the bill?

Mr. KENNEDY. To tell you the truth, I am not familiar with those, Mr. Chairman.

The CHAIRMAN. Then you are not in a position to know whether such devices would be included?

Mr. KENNEDY. No. Would you like me to give you an answer on that, Mr. Chairman?

The CHAIRMAN. I think for the record it would be a good thing to have. I would like to get this legislative history made, though I am somewhat of the opinion that it does not make too much difference about what the legislative history is going to show in view of the broad language in the bill. I think, perhaps, there should be rather general language used in giving broad authority.

On the other hand, if there are certain inclusions to which you have testified, I think that those who are operating in that field should know where they stand.

Mr. KENNEDY. Yes, sir.

The CHAIRMAN. And I believe that they should not be put in the position of not knowing whether they are violating the law and have one Attorney General say that the device is within the meaning of the statute, and some years to have another Attorney General say, "You are in violation."

I think that is what you ought to do. Let the people know where they stand. I am for that and I hope it can be worked out. On page 1 of the bill there is the phrase "designed and manufactured primarily for use in connection with gambling." Before I come back to that, let me first say there are certain requirements: First, that the machine operated must deliver money or property to come within the provisions of this act.

Mr. KENNEDY. That is correct.

The CHAIRMAN. That is one of the requirements.



Mr. KENNEDY. That is correct.

The CHAIRMAN. Second, there must be an element of chance involved with it.

Mr. KENNEDY. That is correct.

The CHAIRMAN. And of course the device must be operated so that a person may become entitled to receive money or property through the element of chance. That is easy to understand. Anybody can understand that; but, as Mr. Moss tried to develop a moment ago, how are you or anybody else going to tell when a particular device is, No. 1, designed and, No. 2, manufactured primarily for use in connection with gambling? In other words, suppose the manufacturer designs and manufactures a device, let us say a pinball machine, how are you going to determine if it is designed and manufactured for amusement purposes only or if it is going to be used in connection with gambling?

Mr. KENNEDY. We are not expecting or intending to cover those kinds of machines. If it is manufactured for purposes of amusement, we are not interested in them, Mr. Chairman.

The CHAIRMAN. Suppose the manufacturer says this machine is manufactured for the purpose of amusement, it has no payoff on it.

Mr. KENNEDY. Then it would not be covered if it didn't have the type of mechanical equipment which would make it a gambling device. It would not be covered.

The CHAIRMAN. Is it very clear as to what your intention is, so those people would know where they stand?

Mr. KENNEDY. Absolutely, Mr. Chairman.

The CHAIRMAN. I believe you said that in the Senate there were certain exclusions inserted in the bill. Parimutuel and other betting equipment designed for use at race tracks are excluded specifically?

Mr. KENNEDY. That is correct.

The CHAIRMAN. And licensed gambling establishments. I assume that means such establishments located in the four counties referred to in Maryland?

Mr. KENNEDY. That is correct.

The CHAIRMAN. And Nevada, where they have licensed gambling?

Mr. KENNEDY. Yes.

Mr. WILLIAMS. That would include dog tracks, for instance, would it not?

Mr. KENNEDY. Yes. It has to be as we have in here, under State law.

The CHAIRMAN. That being true, why would it not be acceptable to include the devices that you just mentioned, namely, pinball machines for amusement purposes only which you do not intend to cover?

Mr. KENNEDY. Well, I have no particular or specific objection, Mr. Chairman.

The CHAIRMAN. I want to make it very clear that I would not suggest a loophole for somebody. I am talking about nailing it down so that those who are operating legally would know they are operating legally and not later on be subjected to a change of mind by someone in the administration of it.

Mr. KENNEDY. I would think that, first, it is established clearly by my testimony before your committee, and also the testimony of Mr. Miller, head of the Criminal Division, before the Senate committee,

that these are not the kinds of machines we have in mind, that they are not covered by the act because they are not machines or mechanical devices primarily for the use of gambling.

The machines we specifically excluded by the legislation, such as the machines used at race tracks, would have been covered by this legislation and so they are specifically and particularly mentioned within this bill, because otherwise they would be covered, but I think it is clear that all machines that are manufactured for amusement purposes are not covered.

I think that probably we get into some difficulty by naming some kinds of machines and not naming others. I think we made it clear here that we are not intending to cover pinball machines or any other kind of machines that are primarily for the purpose of amusement.

The CHAIRMAN. Suppose a manufacturer has every good intention of manufacturing a pinball machine for amusement purposes and it has all of the characteristics that would be expected of a machine to operate for amusement only. Then someone puts in a drum to record the number of free games that are removed or he put in there an odds-changing piece of equipment.

That is the thing that worries me about it. You say that if it shows a limited number of free games it is all right. What would be construed as a limited number would depend on the individual who was enforcing it?

Mr. KENNEDY. No, I think primarily, Mr. Chairman, there would have to be a mechanism which would record the number of games that have been removed from the machine. Say you have run up 20 games. You push a button and those 20 disappear. There has to be some mechanism in there to keep the record showing you have removed 20 games and, therefore, paid out \$2 or whatever it might be. Otherwise, the lessor of the machine can never know how much to collect from the lessee; so to be used for the purposes of gambling you have to have that kind of a mechanism in there. That would be one piece of evidence that we would look for.

We would also look to see if there were some mechanism in there to change odds. I would say to you that I don't think the manufacturers of these machines are that naive. From our study of it, they know whether they are making a gambling device or whether they are making an amusement device. I think it is quite clear in their minds.

The CHAIRMAN. You don't think there is any problem in that respect?

Mr. KENNEDY. I do not, and I think from my testimony here and from Mr. Miller's testimony before the Senate committee, that it has been made quite clear what we have in mind.

Mr. DOMINICK. Would the Chairman yield for one specific question along this line?

The CHAIRMAN. Yes.

Mr. DOMINICK. Mr. Attorney General, there is in all the traveling fairs and carnivals a mechanism by which you steer a drag-hoe, or something like that, and let it drop down and you either pull out cigarettes, or candy, or chewing gum, or something like that. This is obviously a gambling device which requires skill and chance, the way they make these gambling devices at almost every fair, and they are



played heavily by all kinds of people, and simply putting little prizes in, as well as the chewing gum or candy.

Is this to be that kind of mechanism?

Mr. KENNEDY. It seems to me it is already covered by the Johnson Act. As I understand it, that is already covered. I think it is already covered.

Mr. HENRY PETERSON (Deputy Chief, Organized Crime and Racketeering Section, Department of Justice). I am Henry Peterson. The merchandise crane machines are classic examples of what you have in mind, where there is a package of cigarettes or knife and a bunch of red candies in there and you operate the crane. Obviously there is an element of skill, as well as the element of chance. The element of chance, incidentally, arises on whether the claw will be of sufficient strength to retain the object you pick up as opposed to the weight of the object. Many times, if you have played them, you have seen that you fail. That type of machine is covered.

Incidentally, in passing, we have come across instances where those very attractive novelties, knives, and cigarettes, and what have you, were glued to the bottom of the machines.

Thank you, Mr. Chairman.

The CHAIRMAN. Is a player of a gambling device subject to the provisions of such legislation?

Mr. KENNEDY. Pardon?

The CHAIRMAN. Is the player of a gambling device subject to this legislation?

Mr. KENNEDY. No, he is not.

The CHAIRMAN. If a tavern owner should award a prize to a player for a high score obtained on an amusement game, would that make the machine come under the provisions of this bill?

Mr. KENNEDY. No. Again, if the machine was an amusement-type machine, then it would not be covered. He is not covered.

Mr. WILLIAMS. Mr. Chairman, may I ask one question?

The CHAIRMAN. Mr. Williams.

Mr. WILLIAMS. General, how does this bill deal with this type of equipment which is already in use?

Mr. KENNEDY. You mean the ones that—

Mr. WILLIAMS. The ones that are already in use. For instance, you can go over just about any State of the Union and you will find these machines of the type we have here in the room. How does this deal with those which have already been manufactured and were shipped in interstate commerce prior to the passage of this bill?

Mr. KENNEDY. It wouldn't cover them. If they are shipped in interstate commerce, then they would be covered.

Mr. WILLIAMS. Would you have some trouble in distinguishing between that which had been previously shipped and that which was shipped subsequent to the passage of this act?

Mr. KENNEDY. By the provisions of this act, we are going to be able to cover all those that are manufactured from now on, or after the passage of the act. We would have difficulty differentiating between those that are already in use and whether they traveled across State lines after the passage of the act or not.

Mr. WILLIAMS. However, I believe the bill makes reference to the fact that it shall be unlawful for any person to engage in the business

of manufacturing, and repairing, and dealing in or operating a gambling device knowing that it has been transported in interstate or foreign commerce.

For instance, a repairman would have to know whether the machine that he was repairing had been shipped in interstate commerce prior to the passage of this act or following the passage of this act before he would know whether he had a right to work on it. Is that reasonable?

Mr. KENNEDY. Again, the burden of proof would be on us to establish that he knew that this machine had come out of interstate commerce after the passage of this act.

Mr. ROGERS of Texas. Mr. Chairman, may I ask one question?

The CHAIRMAN. Yes.

Mr. ROGERS of Texas. You said you looked up the Maryland situation. Is that a situation over there where the State has no prohibition if the county takes affirmative action to allow it?

Mr. KENNEDY. As I understand it, this is action by the counties, rather than by the State, specifically permitting these kinds of machines to operate or gambling to go on. Therefore, in my judgment, and here is where I have a dispute with the Congressman from Maryland, they are not exempt under the law.

Mr. ROGERS of Texas. Thank you.

Mr. O'BRIEN. Mr. Chairman, may I ask one question?

The CHAIRMAN. Mr. O'Brien.

Mr. O'BRIEN. As I understand it, Mr. Attorney General, you recognize that any device, for amusement or otherwise, can be used for gambling at the local level?

Mr. KENNEDY. That is right.

Mr. O'BRIEN. What you are trying to do here is to minimize the payoff to the syndicates where the big profits are; is that correct?

Mr. KENNEDY. That is correct, Congressman.

Mr. O'BRIEN. Thank you.

The CHAIRMAN. Thank you very much, Mr. Attorney General, for your appearance, and let me compliment you on the work that you are doing in this field.

Mr. KENNEDY. Thank you, Mr. Chairman.

The CHAIRMAN. The committee will adjourn until 2 p.m., at which time Mr. King will be the witness.

(Whereupon, at 12:35 p.m., Tuesday, January 16, 1962, the committee adjourned, to reconvene at 2 p.m. the same day.)

#### AFTER RECESS

The committee reconvened at 2 p.m., Hon. Oren Harris (chairman of the committee) presiding.

The CHAIRMAN. The committee will be in order, please.

This afternoon the witness will be Mr. Rufus King. Will you identify yourself for the record, please?

#### STATEMENT OF RUFUS KING, ESQ., RICE & KING, WASHINGTON, D.C.

Mr. KING. My name is Rufus King. I am a practicing attorney in the District of Columbia, a member of the law firm of Rice & King.

Mr. Chairman, I have a prepared statement which I will file with the committee, but I think I can hit the high spots of it, rather than



read it, if that is your pleasure. I will simply file the statement and then proceed to touch the main points and give the demonstration of the machines which are here in the committee room.

The CHAIRMAN. We will let your statement be filed for the record and you may give a résumé of it, as you desire.

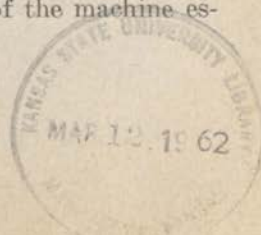
Mr. KING. I would like at the outset to make a statement on behalf of the American Bar Association. I wish to make it very plain on the record that I am going to give this testimony in two capacities: First, I am the chairman of the Legislation Committee of the Section of Criminal Law of the American Bar Association, and formerly served as chairman of that section, and am its section delegate in the House of Delegates of the American Bar Association.

Last August, the American Bar Association House of Delegates formally approved and endorsed this bill, and authorized the section of criminal law to urge favorable consideration of this bill. I allude to S. 1658. So I would like to put on the record that the American Bar Association formally approves and endorses this bill.

As I elaborate in my statement, the American Bar Association has actually been interested in legislation of this kind, aimed at closing the loophole which became apparent early in the history of the Johnson Act, ever since 1951; almost from the outset the American Bar Association has supported various measures which would achieve this objective.

As I said, I am also here in another capacity, and I want to say that everything I say from here on, the views I express, the statements I make, are based upon my own experience, on my own responsibility. However, I also represent a leading manufacturer of amusement type devices in this field, and I think the record should show very clearly that I have that connection, and that the company my firm represents strongly supports the bill also.

Behind me in the hearing room, gentlemen, are two pinball machines. As I believe a member of the committee observed this morning, these machines are familiar and can be seen in most of the States of the Union in public places, airports, drugstores, bars, and so forth. If we weren't here talking about the evils of gambling, I would lay even money that a good many members of this committee and a good many of the audience here in this room can't tell one of those machines from the other. You will observe that they look quite similar. Nevertheless, one of the machines behind me is the fastest gambling device, the fastest machine for organized gambling by means of a mechanical device, that has ever been contrived and loosed on the American public. One of those machines back there, in a good location, a bar, a drugstore, a place where a lot of people pass through, will put \$400 a week out of the pockets of the people who play it. One of those machines was ruled by the Supreme Court a number of years ago to be a slot machine, and was ruled by the Internal Revenue Service, in the administration of its excise taxes on gambling and amusement devices, to be a gambling device, per se. In other words, one of those machines is so obviously and demonstrably a gambling machine that under the internal revenue regulations it is not necessary to show use as a gambling machine. The mere presence of the machine establishes its gambling nature.



Collectively, those machines, one of the two sitting back there, at this moment is pulling revenue out of the pockets of the American public and diverting it into the hands of illegal gambling operators, for the most part—since one of the machines, that is, the gambling operations of one of those machines is illegal in every jurisdiction, except four counties of Maryland and Nevada—collectively the operation of those machines at this moment is drawing approximately a quarter of a billion dollars a year into this activity. I stress that because I think it is shocking, and I think it will emphasize that the problem that concerns this committee is not peanuts. This is a very serious and important economic operation.

One of the machines is designed to simulate the other. This is always one of the characteristics of developments in the gambling field, that if the wolf can put on the sheep's clothing he will do it every time. In a moment I am going to demonstrate them, take them apart, show you the difference, show you what I am talking about. But before that, I would like to touch very briefly on the historical background, just a few words about the evolution, about the forebears of these machines that you see here.

Coin vending devices have been in use since almost the beginning of the 19th century, and what a coin vending device does is perform two functions. It performs mechanically what the clerk in the shop does. It takes the money from the person who uses the machine, and it gives him, in return, some consideration, goods, or services, a penny candy ball, or a pack of cigarettes—or a coin telephone is a good example of a coin vending machine. One of these machines behind me is in that family, descendant of the simple coin vendor.

Around 1890, however, by a brilliant invention of a man named Charles Fey in San Francisco, an adaptation of the coin vendor—which does these two functions—was made to create the coin gambling machine, a machine which, instead of selling something, like the clerk, ran a gambling game, like the croupier, or like the fellow who deals the cards. That innovation consisted principally of still having the machine take the money from the player, still giving something in return, but introducing an element of chance. Those are the elements of the classic definition of gambling: consideration, chance, and prize. I am now describing perfectly the operation of the old one-armed bandit, which I am sure you all remember, and which the Johnson Act was originally aimed at. You put the money in the top, you pulled the lever, the wheels spun, the element of chance was applied, and if you won, the machine dropped the money right out. That type of machine is a machine designed for gambling, and it is constitutionally different from any of the vendors which simply sell something.

I would like to say a few things about this coin machine industry. It has traditionally centered in Chicago. For many years, all of the principal manufacturers made both gambling and amusement devices. But about 1949 there was a split. Part of the industry decided, with the Johnson Act coming along, with the increasing conflict with State policy at all levels, that it would just get out of the gambling field and go into the amusement field. The machines are all still made in Chicago.



Early in the 1930's, the industry out there in Chicago innovated an amusement pinball game. This was a first cousin of the old Victorian parlor game of bagatelle. We brought, just for your interest, as a curiosity, one of the very first amusement pinball games that was ever marketed. This is it—a simple gravity-operated little machine that I think sold for \$12.50 in 1930. You put a penny in. You got seven balls. I know many of the committee will remember the old parlor games like this, where you had a table and some pins and you simply rolled the ball. That is all this was. And it was popular; it was successful. This was during the depression. People would drop a penny in there and have a few minutes of amusement playing these balls down the playboard. So that machine gradually evolved into more sophisticated pinball amusement games, like one of the ones behind me.

But in the middle 1930's another very important innovation, an important invention, came along, and this was a device which made it possible for this now more sophisticated pinball machine to give free games. By an electronic circuit, if you got a score above a certain number, the balls you shot would be dumped back and you could shoot them again. So the amusement you bought from that machine could be extended, by giving you a chance to shoot the balls over. Now during all this time, from the first slot machine to the time I am talking about, and right up to the present, there has been a running fight between local law-enforcement authorities and the designers and innovators of these gambling machines.

As soon as one kind of device was taken to the courts and taken through the appeal courts and ruled finally to be a gambling device, they would come along with something else. It might be interesting to describe a couple of the phases they went through. For example, at the outset the machines that shot the money right out, the one-armed bandit that just spews the winnings right back into your hands, was pretty clearly established in every court that looked at it to be a gambling device, in contravention of local gambling laws. The elements were too obvious: you bet your money in the machine; the chance was obvious, and the payoff was direct. So pretty soon came on the market what were called mint vendors—a plain old one-armed bandit, but down one side was a little device that sold atrocious mints. Every time you put a nickel in that machine, it would drop a package of mints. That went all the way to the supreme courts of a number of States on the argument that the machine was not a gambling device because it gave consideration every time; it sold something every time, and the rest was incidental to this sales transaction. Then, instead of having the machine shoot the money out to the players, it was made to pay off in tokens, or in little paper coupons that could be redeemed by the operator. There were a lot of court cases on whether these tokens were things of value or not. But gradually the law caught up with those.

Then there was a variant—still talking about the old one-armed bandit—where every time, if you won or got those beautiful three bars that meant a jackpot, the machine didn't pay anything off. You had to put another nickel in before it would drop your winnings. They went through a lot of courts arguing for that machine that it wasn't a gambling device because you always knew what you were going to get. You knew that if you put the nickel in and you didn't

win anything, it wouldn't pay; if you did win something, the machine still didn't pay off, and you had to step up and make another purchase, so to speak, put another nickel in to buy your winnings from the preceding play. That confounded the courts for a long time.

Against this background, about 1935, as I said, the amusement pinball machine had developed into something like the machines you see here. They had the play board, the table, a lot of lights and flashing gadgets that were designed to amuse and fill idle time, and they had this free-game device. It was possible for these machines automatically to give the player one or more additional games, by just dropping the balls down so that he could play again. But by this time, as I have also said, in this running fight, the law enforcement authorities had pretty well caught up with the old machines that dropped the coins right out to winners. Actually, pinball machines were made in the 1930's that paid off directly in nickels for high scores. But by this time, the tokens were gone, the vendor argument was mostly gone, and most of these subterfuges had been exposed.

I would like to tell you about one more subterfuge though, that went all the way up in the courts of Maryland. This was a one-armed bandit, the plain, original one-armed bandit, but the console size, a big one. On the side of it was a little box that had a pinball plunger and a ball that you had to shoot up over a hump so it fell into a hole. This you couldn't miss. You hit the ball and it had to go over the hump. In that machine, when the ball dropped you could play the slot machine. That went all the way to the Court of Appeals of Maryland on the argument that it was a skill device instead of a chance device, that it took skill to shoot the ball over the hump.

Anyway, all of these subterfuges were pretty well closed in on. They had had their day in court. So then the industry came up with probably the most brilliant innovation of them all, and that is the innovation that I am going to try to explain to you today. That is the innovation that put the so-called one ball machine in business right after the Second World War, and the innovation that makes possible this gambling operation that I have described by one of these machines here.

What that innovation does, in effect—the Attorney General, I think, described it very clearly this morning—is allow this free-game device, which is a perfectly legitimate part of the amusement machine, to be transformed into a means by which the machine controls payoffs, and controls them just as effectively as if it still shot the money right out of a chute into the hands of the player.

Before I step up to make the demonstration, I would like to say, by way of background also, a little about the structure of this industry, because this is important, as you will see. The manufacturers of the machines sell them outright. Incidentally, one of those machines behind me has a current market price of about \$900, for one unit. The other one has a current market price of about \$300. I will show you why before we get through. But the machines are manufactured and sold to distributors, who are the second stage in the organization of the industry. The distributors, in turn, sell to operators. The operators own the machines, and the operators then put them in locations, bringing in the fourth level, which is the location owner. The place where you play the machine, the bar, the drugstore, the



airport, or whatever, the proprietor of that place I think I can say almost never owns the machines. The machine belongs to an operator, who usually has a string of them. The location owner merely participates in a 50-50 or 40-60 split of the profits from the machine.

The reasons for this breakdown are fairly obvious. I said that the gambling machine is an investment of \$900. Even the others are pretty big capital investments. And particularly the amusement machines have to be rotated. They get stale. People play them for awhile and the same people come to the same places for lunch every day, and so forth, and they get tired of them.

So they have to be rotated around. Also, the maintenance is quite complicated. I am going to open these machines for you before we are through so you can look in the back, and you will find that the gambling version looks sort of like the control section of an ICBM racket. It is a beautiful and enormously complicated electronic mechanism. The maintenance on these is so much that one fellow by himself cannot do it. The economics of it again bring the operator into play, to keep the machines serviced, and so on.

These elements result in an important factor which, as I said, is that the machines are not owned by the owners of the locations where they operate.

Now I will tip my hand. This one on the left is the gambling machine. We will look at this one first.

Incidentally, Mr. Chairman, we prepared a list of the identifying features, when the Internal Revenue Service was concerned with identifying the two, we made a breakdown, a short list, of the identifying features that I am going to talk about, as between the two types of machines. I would like, if I may, to offer that for the record or for the committee at this time.

Mr. WILLIAMS. May I inquire as to who prepared that?

Mr. KING. My law firm, Rice and King.

Mr. WILLIAMS. Your law firm?

Mr. KING. Yes.

Mr. WILLIAMS. Was that done for the section on criminal law of the American Bar Association or was that done for your own information?

Mr. KING. No, Mr. Williams. If there is any question, I am glad you raised that again. Everything I am saying, everything I am referring to now is disassociated from the—

Mr. WILLIAMS. You were candid enough to tell us that, and you were also candid enough to tell us that you represented the manufacturer of some of these "legitimate" machines. Do you represent the manufacturer of either of these machines now in the room?

Mr. KING. I do. I am a representative of the company that manufactures the amusement machine here.

This list was prepared and submitted by us to the Internal Revenue Service at the time that there was some question as to the policy they would adopt in identifying the machines, when there was some question about how they would instruct agents in the field to look at one machine and say it is a gambling machine, and another machine and say it is an amusement machine. We set down quite carefully and quite succinctly here the things, first that you can tell by looking at the machine as it is locked up, and second the things that you can tell when

you open the machine up, the additional things to look for that differentiate the two types.

I will touch on these and demonstrate them.

The CHAIRMAN. Have you copies of that?

Mr. KING. I have only one, Mr. Chairman. I could perhaps locate some more. I thought I would simply submit it for the file or for the record. It is short.

Mr. WILLIAMS. Was that prepared by your law firm at the request of the manufacturer you represent?

Mr. KING. Yes, sir. Well, to this extent, that in their behalf we were negotiating with the Internal Revenue Service at the time these rulings were being formulated to protect our client, to make certain that the line between the gambling and amusement machines was clearly and fairly drawn.

Mr. WILLIAMS. What use has been made of this report?

Mr. KING. As far as I know none, except that it was, I presume, considered in their deliberations at the time. We volunteered it. They didn't ask us for it. It has been circulated around because it is useful in this problem of walking up to two or three machines in a row and determining from examination which is which. It points out features like—

The CHAIRMAN. Has it been acceptable by the Internal Revenue Service?

Mr. KING. Well, no; I certainly would not want to imply that they have endorsed it or anything like that. I mentioned that only to describe how and why it was prepared.

The CHAIRMAN. Then in order that the record may be clear on it, this is your own interpretation, as an attorney for your client, of the distinctions between the two machines to be used in connection with your dealings with the Internal Revenue Service?

Mr. KING. Yes, sir.

Mr. WILLIAMS. This should be considered more as an argument than as finding of fact?

Mr. KING. Well, it is not argumentative. It is an observation.

Mr. WILLIAMS. We will put it that way—an observation.

Mr. KING. Let me illustrate, because I will not touch on these so much in the demonstration.

(The statement referred to follows:)

#### IDENTIFYING FEATURES OF GAMBLING AND NONGAMBLING PINBALL MACHINES

1. The following observation can be made externally without opening the machines:

##### (a) *Variable odds and multiple-coin play*

Gambling: Machines which are designed for gambling have one prominent feature which serves no other purpose, namely, sets of variable odds which can be observed on the glass backboard, e.g.,

75	75	96	96	200	300	450	600
16	20	24	50	96	144	240	480
4	6	8	16	32	64	120	192

and a chance-selector mechanism which operates each time a coin is inserted, whether the board is played or not. Thus the first of the above columns would usually be illuminated when the machine is readied for play, but if another coin is inserted without playing, the higher columns would flash and sometimes (determined by chance) a higher set of odds would light up. This feature can be detected by the simple test of inserting two or more coins in succession without operating the play board.



Nongambling: Amusement machines show no odds sets, and inserting a second coin without operating the play board has no effect (except in some two- and four-player models wherein second, third, and fourth coins activate additional score totalizers so that the machine keeps score for each player individually).

(b) *Knockoff "button" and free play release circuits*

Gambling: The payoff on gambling machines is always controlled by a mechanism and circuit which removes or releases unused free plays. This operation is performed by pushing a button located under the machine on the bottom of the cabinet, or by disconnecting the source of line voltage by unplugging the power cord at the electric outlet and then plugging it back in to activate the machine, or by operating an "on-off" toggle switch also under the machine which has the same effect as disconnecting and reconnecting the line cord. After one or more free games have been won and are shown on the indicator on the glass backboard, the machine can be tested by working the button or switch (easy to find because unless the machine is brandnew the surface around it will be worn and soiled) and/or disconnecting and reconnecting the power supply plug.

Nongambling: Amusement machines have no such device, and the only way to remove free games won is to play off each—usually by shooting at least one ball on the play field, before the next can be set up by pushing the free-game activator button on the front of the machine.

(c) *Free-game indicator*

Gambling: All payoff machines now in operation give at least a three-digit maximum (i.e., up to 999) of free games, and this can be observed simply by noting whether the free-game indicator on the glass back board has three apertures for numbers.

Nongambling: Amusement machines now being manufactured rarely give more than 26 free games, and usually only a maximum of 5 or 10 (because obviously no one would find amusement in playing off free games by the hundreds). Such machines can be unerringly identified by the presence of only a one- or two-digit free game indicator.

(d) *Complexity of play board*

Gambling: The playboards of gambling machines are strikingly identical in that they all have 26 holes in the same pattern and the only changes from model to model are in the painted artwork and colors of the plastic bumpers. Nothing moves on these playboards except the ball itself which rolls down the inclined playboard by gravitational pull.

Nongambling: Since the appeal of amusement types is actually the novelty of the play, each model has a different playboard layout consisting of large illuminated plastic bumpers, some of which kick the ball electromagnetically upon contact, drop-through holes, trap holes, kick-out holes, wire and plastic rollovers which add score when the ball rolls over them, dozens of lights that go on and off during the play, metal and plastic targets which score when hit by the ball, and play-controlled "flippers." A flipper is an electrically operated bat on the board which is activated by the player by pushing buttons located on the sides of the cabinet. Its action is similar to that of a baseball bat in that the player is able by skillful timing to bat the ball back up the board for additional scores. On the nongambling machines, it is the longer-playing complex playboard that appeals to players; not the mere downward rolling ball offered by the gambling machine.

(e) *External dimensional characteristics*

Gambling: Because of the large complex components necessary for gambling, the vertical box (usually called light box) which houses the back glass, is noticeably larger in all dimensions than the nongambling machines. Almost all of the gambling machines mechanisms are housed in this light box.

Nongambling: All of the machines of the nongambling type are uniform in that all the various manufacturers use similar cabinets and light boxes with the following approximate dimensions: Light box: 9 inches deep, 24 inches high, 22 inches wide; cabinet: 15 inches deep, 23 inches wide, 52 inches long. The 2- and 4-player nongambling models, though larger than the above, are easily identified by the large angular type light box and cabinet and scoring panels on the back glass designated "1st player," "2d player," "3d player," "4th player."

*(f) Game details*

**Gambling:** The most widespread version is of the bingo or in-line variety which has one or more bingo cards on the back glass surrounded by other chance selected features such as "extra-balls," "movable numbers in the card," "lighting numbers in each of the 4 corners of the card awards 200, 300, or 400 free plays," "2 numbers in a line pays the same as 3 in-line," "3 the same as 4 in-line," etc. They operate on the same principal as the old one-armed bandits, i.e., the matching or lining up of symbols. Instead of bells and fruit, the symbols used are numbers, arranged on the bingo cards. The names and arrangements vary from model to model, but the basic feature is present and easy to observe in all.

**Nongambling:** Amusement machines have many novelty versions and a variety of game arrangements, but all depend on the accumulation of a single, progressively higher score as the game progresses, and the matching or lining up feature is unusual in them. The machines are varied in theme from model to model as novelty of the game is the attraction. They are styled so that the player can play a simulated game of pool, hockey, baseball, archery, skee-ball, auto-racing, tick-tack-toe, various playing card games, spelling out names, space ships going around the world, diving into a swimming pool, dunking clowns in water tanks, doing crossword puzzles, jigsaw puzzles, lighting the colors of a rainbow, a boxing match, and dozens of others. The nongambling machines have "adding machine" mechanisms to keep a running tally of player's score for hitting various bumpers and contacts which are designated as thousands and millions of "points." When play on these machines commences, the score mechanisms always resets to zero.

2. The following additional observations can be made when access can be had to the inside of the machines by unlocking and opening the front and back panels:

*(a) Replay meter or counter*

**Gambling:** Inside the gambling machines, usually up front near the coinbox, are two meters or counters. They are small electrically operated 5-digit, non-resetting adding devices. One, called the total play counter, keeps a tally of the number of coins inserted and of the free plays played back into the machine. by subtracting the number of coins in the coinbox from the tally shown on the counter, one can ascertain the number of free plays played back into the machine. The second counter or meter can be wired either of two ways: with one circuit, this counter tallies all of the unused or released free plays removed from the externally visible 3-digit indicator in the light box by means of the "knock off" button or circuit. These are "paid off" free games so that the bartender or storekeeper can be reimbursed by the operator for the cash payoffs he has made. The second optional circuit configuration causes this second counter or meter to tally all free plays won by the player. By subtracting the number of free plays played back into the machine as ascertained from the first meter, from the total free plays won, one again is able to determine the number of free plays "knocked off" and paid off.

**Nongambling:** Most amusement machines have one meter or counter that shows the total of all games played, as a check on the coin collector and the operation of the machine. This device operates only when a game is set up for play on the play board.

*(b) Coinbox*

**Gambling:** The gambling machines produce as much as \$300-\$400 per week in a good location; the box below the coin chute is therefore always large enough to hold many thousands of coins (i.e., with interior dimensions about that of a 4- or 5-gallon pail).

**Nongambling:** The top "take" of an amusement machine is \$20-\$30 per week. Therefore the coinboxes are much smaller, usually smaller than a cigarbox.

*(c) General complexity*

**Gambling:** No one who has ever seen the inside workings of a modern "in-line" gambling machine could ever again confuse it with any amusement machine now on the market. It has a complex motor driven "chance" selector mechanism that selects odds and other features. Another motorized assembly known as a search unit "searchers" all of the lineup combinations for a winner after some of the balls have been shot. In addition to these is a large assortment of relays, electrical stepping switches, and 3-digit free-play indicator. Almost all of this mechanism is in the "light box" with a good bit mounted on the hinged back



door of the box. After the second or third ball is shot on the gambling machine, one can hear the machinery inside automatically commence operation and continue to operate for a time even after completion of play.

**Nongambling:** There is considerably less machinery in these machines, particularly in the light box. A noteworthy point is that the only times the mechanisms of a nongambling machine operate is upon the resetting of the machine for a new play and when the ball on the playfield is actually hitting bumpers and electrical contacts to add to the player's score. After the last ball is played, the machine is immediately dead until a new play is started.

(d) *Reflex unit*

**Gambling:** One component in modern gambling machines deserves special mention, because it is never found on nongambling models. This is the reflex unit, a complicated arrangement of gears, magnetic actuators, and electric switches, usually placed on the back door, that automatically increases or reduces the chances of getting better odds by opening certain "advance odds" circuits as free plays are made and by closing them as play continues without making free plays. It gives a compensating effect so that the machine can never be beaten.

**Nongambling:** There is no such mechanism in the nongambling machine so the skill and coordination of each individual player is the controlling factor. The score adjustments in these machines is to enable the operators to control roughly the number of free plays to coin play percentage because if it is too easy, the operator cannot make a return on his investment and if it is too hard, the players will not play the machine. Some locations have generally more skillful players and higher line voltages at the electric outlet which tend to give higher scores due to increased power of the "flippers" to bat the balls back up the board. On the nongambling machines, skillful players always get better scores than those not so skillful with the use of the "flippers" or bats.

Mr. KING. Looking at these two machines, one is a good deal thicker and heavier than the other one because one contains a lot more mechanism than the other. One of them has a very simple play board; all the gambling machines, in spite of some paint and some lights on there, all the gambling machines in use now have 25 holes in a simple play board, arranged like this. Their only function is to execute the gamble by letting the balls fall through the holes. The amusement machines, on the other hand, have very complicated play boards, which have electronic "kickers," traps, gates, and these "flippers," that you can throw the ball back with. This is the kind of thing that, if you know what you are looking for, immediately this will spot the gambling machine, because the board is not designed to amuse anybody but is designed to get the gambling play out of the way as fast as possible.

I see the back is already open. A look at the back, at the difference in the complexity of the mechanism in the two machines, will immediately determine the difference.

What I am going to do first now is demonstrate this gambling-type machine. This is a 10-cent machine. I have dropped a dime in. If I want to—well, this is going to give me five balls to shoot around and drop in the holes. If I want to play the machine, I can shoot the balls and play a pinball game. But if I don't want to, I drop another dime, and when I drop this second dime it activates a series of chance mechanisms that even look like the old ratchets on the one-armed bandit.

Those are going to spin by chance, and if they stop fortunately for me, the odds which are now shown here, for instance, on the red as 75, 16, and 4, may advance to 75, 50, and 6, or they might even advance twice. When I drop this, I am playing a gambling operation with this machine which is exactly as if I had put a dime in the one-armed bandit and pulled the handle.

Here I have made a little money. I have moved the odds from 75, 16 and 4 to 75, 20 and 6. I drop another dime, and I made money again, the odds having gone up to 96, 24 and 8. I drop another dime, and one of the odds advanced. I am doing very well. I drop another dime, and there is no change in the odds. Incidentally, some of these other magic square plays also are on chance circuits, so if I advance the odds I may get some other advantages.

Here I drop another dime. I am only reasonably good at this, but I can drop dimes here one after the other—I think I have probably put a dollar and a half in the machine on this play so far without touching the play board, and I have run the odds to 96, 50, and 16 on any of the combinations. Now I will play it. This is a pinball player's dream because the glass is open and you can actually spot the shot where you want it. What I am going to do—to save the committee's time, and also because I am not very good at it—is simply line up a winning combination that will win me some free games on this machine.

Now I have a winning combination, 9, 1, and 2, from the red. That will pay 16 free games. The 16 free games are now being recorded on this meter in the right-hand corner. This is the meter the Attorney General mentioned this morning which goes up to 999. Another obvious gambling feature is that any machine that gives you 999 additional free plays is clearly not doing it just to give you the pleasure of playing 999 games. This other machine will only give 5, 10, or up to 26, the amusement machine, but ordinarily it gives 5 or 10 at the most.

Had I lined up 4 in a row, I would have gotten 50 free games. We would have put 50 on the meter. Had I hit 5 in a row I would have gotten 96 free games on the meter. I point out that if I stayed there throwing dimes until I got as high as I could go, the maximum odds would have been 600 free games, which would be \$60 on this one play of the machine, for a dollar or two. So you see, we are not talking about a nickel play on a one-armed bandit against a dollar jackpot. We are talking about as much as \$10, \$15, or \$20 against \$60 which I could win in a single play on this machine.

The CHAIRMAN. How do you know it will be \$60?

Mr. KING. The maximum odds, Mr. Chairman, are 600. The maximum odds that I could have run up here would be 600 free games for getting 5 in a line. That means that if I had hit this, on this indicator on 1 play it would click 600, this would run up to 600 units. Those free games on there, just like on the amusement machine, can be played again. This is one way the machine can get my winnings back. Now I have played one and it has gone back down to 15. I will push the free-game button again and you will see the odds going through their cycle again. I could gamble the whole thing—my whole winnings—back again.

But let's suppose that I want my winnings, I am ready to go, and there are 14 games on that indicator up there. Those are the free games that I have won on this machine. The machine doesn't give me the money. The bartender, the druggist, the proprietor, the location owner, does. I go to him and I say, "I have 14 games on the machine." He doesn't have to trust me. He comes to the machine. In this case, he gives me \$1.40. But, remember, it could be \$60 on one play. He gives me the money and then what he does is this: He



reaches under the machine and there is a secret switch under here and he snaps it and when he snaps it those games go off that indicator. As they go off that counter they go on a meter down here, which is locked into the coinbox. The owner of the machine has the key. The bartender pays me my \$1.40 and I walk out. Then when the owner comes around and unlocks the machine at the end of the week, he opens this, takes out the coinbox, looks on the meter, and there is a record, in this case of \$1.40 paid out. So he takes \$1.40 out of this coinbox, and gives it to the location owner. Then they split the balance.

Gentlemen, understanding this is understanding the key to the whole thing. This machine, by this devious method, is still controlling the payoff. This is still a gambling machine that mechanically controls all three of the elements: it takes the money from the player, it applies the element of chance, and it controls the payoff. The machine is still in complete charge of the gambling operation.

Let me put it this way: If you and I want to gamble, Mr. Chairman, we just want to have some fun, we can step up to this gambling machine and bet on the scores we make on it. We could also step up to an amusement machine and bet on the scores we made on it. As a matter of fact, for that purpose, the U.S. Government probably makes the best gambling device that has ever been put out. It is gravity powered, it never wears out, it is hard to rig; for gambling transactions between two people we can gamble on either of these two machines or gamble with a coin.

The CHAIRMAN. For the record you should state what you are referring to.

Mr. KING. It is a silver dollar.

But if you and I wanted to go into the business of organizing a gambling operation, if we wanted to go out and make a business operation out of gambling, out of running a house operation, we couldn't do it with the amusement machine and we couldn't do it with the silver dollar. We would have to have the gambling machine. The gambling machine is designed for that purpose, and that is its function.

In a minute I shall turn the gambling machine around so the committee can see the back of it.

But now let me demonstrate the difference on the amusement machine. You activate it by dropping into it, in this case, a nickel. There is nothing else to do. If you drop another nickel, you just lose it. It goes into the coinbox. There is nothing more to do except shoot the balls. But on this machine, instead of a very fast play, there are all kinds of flashers playing, kickers, flippers, knocking the ball back and forth. If this is amusing, what you are getting is a few minutes of amusement. The amusement machine also will give free games. If you beat the score of 1,100, with an indicator down here—with one window, not three digits—it will show one game. There are other features which will give free games on this one. But if you win a free game on this machine, there is nothing to do but stand here and play it off. If you don't play it off, the next man cannot get anything more for his money except a free ride. That is all the machine can do, and that is its sole function. It is selling whatever the amusement value of playing this thing is, for the considera-

tion that is put into it. That is all there is to it. That is the same transaction as the machine that sells you a pack of cigarettes, the telephone that you put a coin into to use, and so on.

Mr. WILLIAMS. May I ask a question?

Mr. KING. Surely.

Mr. WILLIAMS. In running the games off the amusement machine, can't you press a button and do it manually?

Mr. KING. By playing them off?

Mr. WILLIAMS. No, without playing them off. You don't have to shoot the balls, do you?

Mr. KING. You have to shoot one ball through and then it will drop down one game.

Mr. WILLIAMS. Then you can't simply push a button and run them off?

Mr. KING. No. And you can't put another coin in. I think this machine knocks a game off if you put another coin in before you have played off the original one.

To go back to the gambling machine, besides the payoff feature which I mentioned, the other outstanding characteristic is what I demonstrated first, the multiple odds, which make it possible for this fast gambling transaction before you ever get into the play. I would like to turn the machine around now, this gambling type machine.

Well, now we have tilted it.

This is to show you the complexity of this machine. These are the circuit selectors. This unit has no place in a machine that is not a gambling machine. This is the circuit that you play against when you drop those dimes in there.

Down on the bottom is a device called a reflex unit which is found only in gambling machines, and actually what this does is to keep adjusting the odds to keep the balance in favor of the house. If this machine pays off a series of games up here on this indicator, every time there is a payoff, a little worm gear is moved and the device begins to pull circuits apart, so when I showed you we were dropping dimes for high odds, some of those are just disconnected. Then after the machine takes a lot of games and doesn't pay off, the worm gear goes the other way, the circuits are closed and the odds get better.

This is like plugging the teeth in an old one-armed bandit except on this machine and the current models it is done automatically. You find things like this, like this chance selector, like this replay meter and knockoff button, on a gambling machine. And any court in the land, I think, will recognize that these are gambling features; that they are to facilitate a gambling operation.

I also wanted you to see this to deal with the argument that the amusement machines might be converted into gambling machines. I think if you take a look at this and then take a look at the back of the amusement machine, which is much simpler, to start out with the amusement machine and try to make it into a gambling machine would be like starting with a small sports car and trying to end up with a Mack truck. You could do it, but they are in entirely different categories.

I think that probably covers the main features. I do want to emphasize that the devices I pointed out on the gambling type machine are what one might call the current variants. Let me give an example.



The knockoff button which I reached for on this machine has become well known; the law enforcement officers know about it; the courts have known about it. So in the more current models, you would reach for the button and it is not there. The latest models are wired so that instead of a button you have to unplug the machine from the wall supply. You go and pull the plug out from the wall and put it back to knock off the games. But the same pay off is made. There have been, and there will be, infinite new variants even from this. This is not the last word, but just the current development.

However, the language of S. 1658, in my opinion, using generic terms—and I think it very important to stick with generic terms, what the machines are designed for and what they do, rather than what they look like or any particular feature—using generic terms, in my opinion, S. 1658 will bring this machine within the purview of the Johnson Act. I urge the committee to remember that this is not brandnew, pioneering legislation. The pattern was set in 1951. The only trouble was that there were these glaring deficiencies in the definition that controlled the Johnson Act, and that all the committee is now being asked to do now is close those loopholes.

Perhaps just for amusement I will point out these two ads from trade journals about 1954. These are both for machines called "joker" machines, flash jokers. They are old one-armed bandit slot machines but they don't have any place you can put the coin in, so they are not coin-operated, and they don't pay off in cash. They don't shoot the money out, so they don't pay off in money or property. Instead of that they have a wire that goes from the machine down behind the bar or behind the counter, and to play this machine you, in its day—I don't think there are many of them left—you went to the bartender, you gave him a dollar, and he punched 20 nickel plays. Then you go and play it and the winnings come on a meter and the bartender pays you behind the bar. The advertising copy of these ads from the trade journals, talking about the "flash joker," reads:

This is the machine cleared by the Department of Justice in Washington, D.C., as not coming under the Johnson Act and can be shipped in interstate commerce.

They were advertised on that basis, almost mocking the terms of the law.

I urge the committee not to fall into a trap again like this, not to go into any kind of specific categories that leave gaps between them, or specific features, like "drum or reel with insignia thereon," which will make it possible again for this ingenious, aggressive industry, which, as I have demonstrated, is enormously lucrative and powerful, just to walk right around the provisions of the act.

Mr. WILLIAMS. How many concerns manufacture this gambling type of machine?

Mr. KING. Only a few now. I would say production is rather sporadic. I would say probably less than a half dozen. There are some that recondition them, taking old parts and making new ones. The industry, like most industries, is tending more and more to be dominated by a few manufacturers.

Mr. WILLIAMS. How about the amusement-type machine?

Mr. KING. I would say the same answer.

The company that makes most of these gambling-type machines also makes many lines of what is known as arcade equipment, fine bowling alleys, guns, and that sort of thing. These are not their only line.

It is possible for manufacturers to go from one to the other. As I said, everybody did until almost 1950.

Mr. O'BRIEN. At what point do the racketeers get into the operation of these gambling machines?

Mr. KING. At the distribution level. I might say, Mr. Chairman, that I was legislative counsel to the Kefauver committee and drafted all of its legislation, including S. 1624, in the 82d Congress, which was the forerunner of this bill. I am also the author of the Model Anti-Gambling Act, which the Commissioners on Uniform State Laws have promulgated. I have been very much concerned with this problem for a good many years. And I don't believe it is fair to characterize any large part of any of this industry as gangster or hoodlum operated. But where you get the pressure is at the distribution end. I said one of these machines will pull \$400 out of a little bar on the corner. The bar at the next corner has a machine to pull the same amount out. That lends itself, with that much money at stake, to a good deal of pressure and a good deal of organized pressure for one fellow or one group to control the distributin in a growing area. I think that is where the conflict, the racketeering kind of thing, mostly occurred.

Mr. WILLIAMS. Are you referring to the distributor or the operator?

Mr. KING. I would say at the operator level, the relationship between the operator and the location owner. This, I am sure, as the committee recalls, is a problem that has appeared in other areas, the juke box area, principally.

It could appear in connection with the amusement pinball machines, because anything that lends itself to the exploitation of another man's business—you put the cigarette vendor, you put the juke box, you put the shoe shine or anything else you like in somebody else's business, and you are pulling revenue out of his establishment—this lends itself to organization, and organization at that level sometimes lends itself to muscle. But the difference between these machines—well, I don't know if I said that one of these amusement machines in that same good location, the amusement machine, will pull \$15 or \$20 per week out, so the difference in the dimensions of the problem is almost the difference between black and white. There is the difference, also, in the matter of legality in almost every jurisdiction. I must say in honesty there are some jurisdictions that have held that a free game itself is a thing of value, and that would make even the amusement machine with a free game feature also a gambling device. In almost all jurisdictions, however, those are operating legally. You don't have the other problem that attends this gambling kind of machine, which is corruption. Remember, the money that machine pulls out of a bar somewhere, this gambling device, isn't really dirty money. It isn't like the money you get from peddling narcotics or extortion.

It is something that no one gets outraged at, winning or losing a couple of dollars, or putting a bet with a bookmaker, and nobody gets too concerned if the policeman on the beat just lets a couple of these run for awhile, and nobody gets too concerned if the policeman



drops in and maybe takes a little present, or it gets to where it is organized, where the captain sends around to these locations and takes a cut. But the evil of that, apart from the inherent moral wrong of corrupting law enforcement, the evil is when you begin to get this organized, when the mob or syndicate begins to get hold of it, because if you have a policeman on your pay for this stuff, he is yours. You get him hooked, and you get control of an area and its law enforcement, and then under these relatively harmless things come narcotics, extortion, organized vice, everything in the book. It is the function of these gambling machines as an entering wedge, far beyond their inherent evil, that makes them a national problem.

Mr. Chairman, I don't think it should go into the record, but I brought a brief that our firm prepared supporting the Government's position in the *Korpan* case. I brought some copies because I thought if the committee was interested in it, this has pictures out of the trade journals of the evolution of these different types of machines and a discussion of what I have said here. It is an easy way to take a graphic look at the twistings and turnings and the development of the different kinds of machines in the gambling field. I thought I would leave some with Mr. Williamson, if I might.

The CHAIRMAN. They may be received for the files for reference by the committee.

Mr. KING. I believe that concludes my statement.

(The prepared statement of Mr. King follows:)

STATEMENT OF RUFUS KING, ATTORNEY, WASHINGTON, D.C.

My name is Rufus King and I am chairman of the Committee on Legislation of the Section of Criminal Law of the American Bar Association. I have also served as chairman of this section and am currently its delegate in the ABA House of Delegates.

On August 10, 1961, at the annual meeting of the American Bar Association in St. Louis, the house of delegates formally approved and endorsed S. 1658 and authorized the criminal law section to take all appropriate steps to support this measure and assure its passage. I am therefore able to state that the American Bar Association fully supports the bill.

The purpose of this bill is to amend the Johnson Act of 1951 (15 U.S.C. 1171), which outlawed the interstate transportation of slot machines, to close some loopholes which have crippled the enforcement of this law ever since its original enactment. The essential difficulty lay in the definition of gambling devices, which is in two parts: one part includes machines with "a drum or reel with insignia thereon" which deliver money or property or the right to receive money or property, while the second part includes machines "operated by insertion of a coin" which deliver money or property only. So if a gambling machine contains no drum or reel it does not fall in the first category and if it pays off in credit rather than money or property, or if it is not directly operated by a coin, it does not fall in the second category.

This loophole has permitted the interstate transportation and illegal operation of many mechanical gambling devices, including most importantly the so-called bingo or in-line pinball machine machine.

The American Bar Association has been supporting legislation to overcome this deficiency in the law ever since 1951, when it endorsed S. 1624 of the 82d Congress (containing language substantially identical with the amendatory language used in S. 1658). This original bill was approved by the ABA on recommendation of its Commission on Organized Crime, which was organized to cooperate with the old Senate Crime Committee and to help carry out its objectives.

During all the intervening years the American Bar Association has supported legislation of similar import in each Congress, and in 1959, it endorsed and approved another bill, S. 2107, 86th Congress, which would have accomplished the same purpose by slightly different means.

So I believe I am authorized to state that the Association not only supports S. 1658 specifically but has also been actively concerned with the problem, and with closing the loophole in the Johnson Act for more than a decade.

The foregoing concludes my statement of the position of the American Bar Association, and I want to make very clear to the committee and on the record that the statements and views in the rest of my testimony are not offered in my capacity as a spokesman for the ABA. The record should also show that my firm represents a leading manufacturer of amusement type pinball games, and that the demonstration we are going to put on for the committee is made possible by this client's cooperation.

I feel that it would be very helpful for the committee, in its consideration of S. 1658, to have a clear understanding of the differences between devices which are designed and manufactured solely for amusement purposes (and which will not be affected by this legislation) and those which are actually the gambling types at which S. 1658 is aimed. I have a sample of each type of machine here with me in the hearing room, but before demonstrating them I shall try to explain the inherent differences, and give you some of the historical background that has led to their evolution.

Coin-vending machines have been in use in this country since the beginning of the 19th century. All coin-vending machines perform two functions: (1) they take money from the customer; and (2) they deliver some kind of consideration in return. Examples are penny candy vendors, scales, nickelodeons, or coin telephones. Amusement devices are in precisely this category also; they take a coin from the player and they deliver in return whatever amusement value inheres in playing the machine.

Around 1890 a brilliant innovation was developed from the coin vendor, a coin-operated machine for gambling. Such machines were first produced in San Francisco by a man named Charles Fay and in Chicago by Herbert Mills, just before the turn of the century. They performed the two functions of the vending machines, namely, taking a coin and returning a consideration, but with an important added feature, the introduction of an element of chance. The result was that the consideration returned for each play would vary automatically, by chance, on successive operations of the machine, or in short, the machines would pay off winners and jackpots.

These were the first "one-armed bandits", and they were an instant commercial success. For a small investment the proprietor of any public place could set up a mechanical gambling operation that required little maintenance or attention and always produced revenue for the "house."

Fortunes were made in the production of these machines, and a substantial industry was founded on them. But they soon came into conflict with the public policy of many jurisdictions against lotteries and gambling. Thus began a half century struggle between the gambling-machine interests and public authorities, which is still going on today. In this struggle the industry has proved itself marvelously ingenious. Local gambling laws were often chaotic and indifferently enforced, and it can fairly be said that the machine-makers have had the best of it most of the time. As soon as one new device had been taken through all the appeals courts and outlawed, the industry would spawn something else.

The original one-armed bandit went through many changes. It was built to look like a floor vendor, and to pay off in merchandise, such as cigarettes, golf balls, etc. It was built to pay off in redeemable coupons or tokens, so that its operators could argue that it gave nothing of value. Then it was combined with a vending device which gave mints or gum, so that it could be argued that the machine always gave value and was therefore a bona fide vendor. Simple plays, requiring some kind of skill, were combined with gambling machines so it could be claimed that the machines were rewarding skill instead of paying out by chance. And when electric models came along (the originals were spring motivated) the chance-determining reels were replaced by a series of electric circuits concealed within the machine, and other features like multiple-odds play were added. Incidentally, the multiple-odds feature, which gives a player successively higher odds for the insertion of additional coins before the machine is played, is still one of the plainest identifying marks of a gambling-adapted machine, because the additional deposits have nothing to do with the play or amusement features.

Early in the 1930's the first pinball games came on the scene. These games trace back to the old Victorian parlor game of bagatelle, and the first models were toylike penny amusement devices. But they were soon followed by machines



that paid off winners directly in coins—and this set off a great wave of skill-versus-chance opinions in the appeals courts.

In the late 1930's came another important innovation, a free-game mechanism that permitted the winner of a high score to play one or more additional games by working the coin chute without inserting additional coins. This raised the question whether a free game, *per se*, was a thing of value or merely an amusement feature, but most jurisdictions held that it was the latter, so the free-game pinball machine won general acceptance as a bona fide amusement device. It blossomed with more and more play features—traps, gates, kickers, flippers, etc.—and it has remained popular wherever it does not compete with its gambling counterparts.

But as might have been expected, the amusement pinball machine soon had gambling adaptations, thanks in part at least, to what has perhaps been the most important innovation of them all, the conversion of the free-game device into a mechanism for controlling payoffs. This was done by adding what are known in the industry as a replay meter and a knock-off button.

I stressed at the outset that while vending and amusement machines perform two functions, all gambling machine must perform three: take the player's money, apply an element of chance, and control the payoff or prize. It is noteworthy that these are the elements in all classic definitions of gambling; namely, consideration, chance, and prize.

In the beginning, the control of the payoff by gambling machines was easy; the machines simply spat out the winnings directly in coins. But when direct payoffs were outlawed, and the gambling machine manufacturers turned to various subterfuges, another problem developed. These machines are universally owned by operators, instead of by the owners of the locations where they are placed, and when the machine could no longer pay directly in cash to the player it became necessary to work out some way for the machine to control not only the prize but also the division between the operator, who is the actual owner of the device, and the location owner. With redeemable coupons or tokens this division was still easy. The location owner paid the winners and then cashed the coupons or tokens back against the contents of the machine. But these tokens were quickly held to be things of value and outlawed, leaving this payoff problem unsolved. A way had to be found for the machine to make a tamper-proof record of payoffs without giving anything at all directly to the player. Without this, the operator could not control the location owner, or protect the proceeds of the play.

I am talking now, of course, about a problem which was only important in jurisdictions where gambling machines are illegal—and it is not too much to say that in such jurisdictions organized gambling machine operation would virtually have ended if this free play conversion device had not come along.

Accordingly, I am going to explain and demonstrate the knock-off button and replay meter carefully, because understanding them is the key to understanding the basic difference between gambling and amusement devices currently in use, and thus also the key to understanding the purpose of S. 1658.

The gambling version of this machine, like its amusement counterpart, awards free games to the player and indicates the number he has won on the backboard. But the player of the gambling machine does not have to play the games he has won. Instead, the machine is equipped with a special circuit which knocks off the free games shown on the backboard, and with a meter which makes it possible to compute the number of games that have been thus removed. This enables the location owner—the druggist, tavernkeeper, or grocer in whose premises the machines are placed—to pay the winnings, release the games on the machine as they are simultaneously recorded inside, and then get his money back from the record on the meter when the owner comes around and opens up the coin box. Or, in short, the machine is controlling payouts again, just as effectively as if it still dropped the cash right into the winners' hands.

Even when the original Johnson Act was passed, in 1951, the traditional one-armed bandit was already generally outlawed. Even then, these gambling pinball machines had been substituted, and were providing the foundation of a multimillion dollar illegal gambling operation that was not touched by the Federal law.

The first type, introduced before World War II, was the one-ball machine. It looked like a pinball table, but it had electric chance-determining circuits inside, gave multiple odds for additional coins, and paid off by means of the knock-off button and replay meter. The player shot a single ball to complete

the play—which was actually no more than pulling the handle of the one-armed bandit.

There were of course more court decisions to establish that these one-ball machines were not games of skill, and by the early 1950's they were gradually driven off the market. Their successor was, and is, the bingo or in-line machine, which gives the player five balls like its amusement counterpart, but which has all the gambling features: chance selection, multiple odds for additional coins, and a knock-off button replay meter control for payoffs. This is actually a much faster gambling machine than any of its predecessors. The old one-armed bandit isn't even in its class. For example, with the electric circuits which spin the chance mechanism to change the odds every time a coin is dropped in, the player can, in effect, gamble his whole pay check without ever touching the plunger or shooting any balls on the play board. The odds the machine gives will theoretically run up to where the gamble is no longer 10 cents against a few multiples of 10 cents—but \$10 to \$50 or \$60 on a single play. The machine is also equipped with what is known in the industry as a reflex meter, which automatically changes the mechanical odds downward after the machine has paid out a few times (like plugging off stops on the old slot machines).

One of these machines, in a good location, will take \$300 or \$400 per week, while its amusement counterpart would only early \$15 or \$20 in the same spot. Since the gambling operation of these machines is illegal in all jurisdictions except Nevada and four counties of Maryland, it is hard to estimate accurately how much revenue they pour into the coffers of the gambling interests. But based on an average annual production of 20,000 units, an average life of five years for each machine, and an average take of \$50 per week per machine, the gross would be \$260 million.

A number of States have outlawed these machines by judicial decision. [*In re Trombetta*, 149 A. 2d 483 (Pa.); *Farina v. Kelly*, 162 A. 2d 517 (Conn.), July 5, 1960; *People v. Gravenhorst*, 32 N.Y.S. 2d 760; *State v. Ricciardi*, 114 A. 2d 257 (N.J.); *State v. Bally Beach Club Pin Ball Machine*, 119 A. 2d 876 (Vt.)]. In 1957 the Supreme Court held them to be slot machines within the meaning of the Internal Revenue Code (*U.S. v. Korpan*, 354 U.S. 271). And the Internal Revenue Service has ruled that they are gambling devices, *per se*, subject to the \$250 gambling tax stamp rather than the \$10 amusement stamp. Rev. Ruling 59-294, I.R.S. Bull. 1959-36; Rev. Ruling 60-102, I.R.S. Bull. 1960-11.

S. 1658, by amending the definition in the Johnson Act so as to include gambling machines which entitle the player to receive money or property, will bring these devices, as well as other current gambling variations, within the purview of the Federal law.

The CHAIRMAN. Mr. Williams, have you any questions?

Mr. WILLIAMS. I believe not. I would like to congratulate Mr. King for this splendidly detailed and clear statement. He has done an excellent job.

The CHAIRMAN. Schenck?

Mr. SCHENCK. I have no questions.

The CHAIRMAN. Mr. O'Brien?

Mr. O'BRIEN. I would just like to ask one question. The fellow in the bar who's judgment is just a little bit blurred, he could probably throw \$50 into one of those machines in the course of an evening with those multiple odds, couldn't he?

Mr. KING. \$50 in an hour or less, Mr. O'Brien. You saw me drop \$1.50 or \$2.00, and that didn't even interrupt the testimony. I think it must be emphasized that the dimensions of the gambling on this machine—Well, they put the one-armed bandit right out of the play, for that reason.

Mr. O'BRIEN. In other words, you could have a faster loss with that than you could with the old slot machine?

Mr. KING. Yes, sir.

The CHAIRMAN. Mr. Younger?



Mr. YOUNGER. I think you have given a fine explanation, Mr. King.

Mr. KING. Did I mention, Mr. Younger, that all of these companies during the war, because of the quality of this electronic work they were doing, made their E's and collectively did a great deal for the war effort? You can look at the skill and the organizations that go into these things. They are high quality electronics.

Mr. YOUNGER. They are. There is no question about that.

The CHAIRMAN. Mr. Moss?

Mr. MOSS. I have no questions, Mr. Chairman.

The CHAIRMAN. Mr. Devine?

Mr. DEVINE. Mr. King, can you give us a rough estimate of how many of this gambling type machine are in operation in the country?

Mr. KING. The figure of a quarter of a billion dollars, Mr. Devine, was based on—

Mr. DEVINE. Not money, machines.

Mr. KING. It was based on 100,000 machines drawing an average of \$50 a week. I will tell you the basis on which I reached that. The production, give or take a little, has been around 20,000 a year, new units. The average life of the machine, give or take a little, is 5 years. So the production of 20,000 a year and a 5-year life would give 100,000. Then to reach my dollar figure I multiplied 100,000 by \$50, which is a conservative estimate. I said they would pull \$200 or \$300 per machine. I would say roughly 100,000. Because they are illegal, because they are operating sort of under wraps, it is very hard to make an accurate estimate. I know that the Federal tax records, which are supposed to apply to these, show vastly less than this number. I believe the whole number of \$250 stamps sold in recent years has been running in the range of nine, ten, or twelve thousand. Again, nobody is catching up with these.

Mr. DEVINE. Then again, on a Gottlieb type of machine, can you estimate how many of those are in operation in the country for amusement only?

Mr. KING. I would say, using the same process, maybe 30,000 a year production of those, and the same life. That would be 150,000. That could be off considerably, but it is not a reckless statement. It is in the range of 100,000 to perhaps less than 100,000 of the gambling machines and 150,000, one way or the other, of the amusement type.

Mr. DEVINE. These are a modernized electronic type of the old one-armed bandit that has laid over on its back?

Mr. KING. Exactly, and more efficient than the old one-armed bandit, for the purpose of running a gambling operation.

Mr. DEVINE. I wish to compliment you, too, on your testimony. I was formerly involved in law enforcement and I can confirm your remarks about this leading into the other types of crimes, as you indicate, narcotics, prostitution, and related crimes.

That is all, Mr. Chairman.

The CHAIRMAN. Mr. Thomson?

Mr. THOMSON. I have no questions, Mr. Chairman.

The CHAIRMAN. Mr. King, the Johnson Act does not cover this type of a machine which you have explained as being a gambling machine, per se?

Mr. KING. No, it doesn't, Mr. Chairman, because this machine doesn't pay off in money or property. It pays off in credit. That is

the way it escapes one-half of the definition. And it has no drum or reel. I believe one court—one of the death blows to the old one-ball machine—was persuaded that the devices in the back were equivalents of the drum or reel and related to the insignia on the front. That was stretching it. But these machines have grown up in the hiatus between parts 1 and 2 of the present definition of the Johnson Act.

The CHAIRMAN. The Johnson Act applies only to machines that pay off in money?

Mr. KING. It has two categories, Mr. Chairman. A is machines with a drum or a reel with insignia thereon—that is the one-armed bandit characteristic—and which give money or property or a right to money or property. That is one definition. If it has a drum or reel and it gives money or property, or, in addition, it gives a credit, a right to money or property, then it is brought into the Johnson Act under section 1. Section 2 is any machine operated by the insertion of a coin and which, by an element of chance, delivers money or property. But the draftsmen omitted, "or a right to receive money or property." So this machine doesn't fall under number 1 because it doesn't have any drum or reel with insignia thereon, it doesn't fall under number 2 because it doesn't pay off in money or property. It doesn't pay off by shooting the coin right out. That is the area where this and some of its cousins, other similar machines, where they have flourished.

The CHAIRMAN. Does the company that makes this machine also make similar machines for amusement only?

Mr. KING. I don't believe currently it does, Mr. Chairman, but as I said, it makes a large line of other amusement devices, what is called arcade equipment, shuffle alleys, guns, target games. So that this is by no means its exclusive line, in my understanding.

Mr. WILLIAMS. Do the old slot machine manufacturers make these things now? Is it the same group?

Mr. KING. I believe most of the large slot-machine manufacturers have dropped out of the picture, Mr. Williams. There have been many changes in the industry. I am not intimately familiar with it. But I do not believe that it would be fair to say that these people are the old slot-machine manufacturers.

The CHAIRMAN. Is there anything to keep any company who wants to manufacture only the amusement type of machine, if they so desire?

Mr. KING. Certainly not. I may be doing my clients a disservice, because they will get enormous competition if this new law goes into effect. Of course not, the field is open for everyone.

The CHAIRMAN. Is your client the only one that makes the amusement machines?

Mr. KING. No, sir, there are several companies. I think it is perfectly fair to point out that there is, indirectly, a competitive stake in the position I am taking for my client, because in areas where, legally or illegally, this kind of gambling machine is flooding the market, there is no room for amusement devices, there is less room even for jukeboxes. This device is such an efficient and effective absorber of the player's money that it simply blankets out what I would characterize as legitimate kinds of coin-operated machines.



The CHAIRMAN. There are some exclusions to the proposal in S. 1658, such as parimutual betting and so forth. Is the language sufficiently clear with reference to the pinball machines to distinguish the difference between those that were designed for amusement and those that were designed for gambling?

Mr. KING. I think it is very clear, Mr. Chairman. I drafted some of the original phrasing on which this is based, and I do not think it is the best draftsmanship but I think it accomplishes the purpose, basically in this way: The first definition of the two that control the Johnson Act never has been any good, really, because it has this drum or reel limitation. All you have to do is make a machine that does not have a drum or reel and that is out. The second definition was a good generic definition of a gambling device, a machine designed and manufactured primarily for use in connection with gambling—which, as the Attorney General said, this morning, puts a burden on them to show the purpose—and which, when operated, may deliver as a result of an element of chance, any money or property.

This is a generic definition. Any machine which is designed for gambling and which operates this way and may deliver money or property, that is a generic definition.

The purpose of S. 1658 in improving, and tightening the definition, is adding to money or property any right to receive money or property. So the heart of this act has always been, and will be, the second part of the definition, which is being amended here by this language.

The CHAIRMAN. I am just wondering—I am trying to distinguish in my own mind—how an enforcing officer would determine whether the manufacturer designed and manufactured an amusement type machine, or manufactured a machine for gambling purposes?

Mr. KING. Ultimately the courts would decide, Mr. Chairman. In my statement—and I didn't bother to cite them here—I have set forth half dozen cases where this kind of machine has been brought into the State courts under the State gambling laws, where the district attorney said, "Look, here is this chance determining unit, here is the payoff device, here is the reflex unit, and on this basis we urge Your Honor to determine that this is a gambling machine." That distinction has been made plainly by a good many courts. I think with this generic language and the authorities—there are hundreds of decisions on these gambling devices, it having been a running game for 60 years, with everything that could be thought of having been tried—with this generic language and the guidance that the courts already have, plus the not inconsiderable experience and authority of the Internal Revenue Service, which has been over this ground from some years ago, I don't think there will be any difficulty at all. I don't fear that any manufacturers in the category of my client who manufacture amusement games will be penalized by this law, and I don't fear, as far as I can see, that any of the companies or persons who are intending to design and manufacture gambling devices are going to walk through it, like they did through the original act.

The CHAIRMAN. The Attorney General said this morning that he did not intend to include as violations machines where a reward or a prize would be given for so many free games.

MR. KING. Mr. Chairman, I think the Attorney General was addressing himself to the distinction that I attempted to make with respect to a gambling transaction just between two persons if a bartender wants to give a beer when somebody gets a free game on that amusement machine, or if he wants to give a free beer when somebody rolls the dice cup, or if he wants to give a free beer to everyone who has an odd numbered social security card, that is gambling between the two of them. But that has nothing to do with what we are talking about, with the organized gambling operations and the machine that is designed to conduct an organized gambling operation.

The CHAIRMAN. I know it does not, but suppose, you had the Attorney General—and this does impose upon the Attorney General a tremendous responsibility—facing one particular situation.

Really, it is his own judgment under this language. For purposes of discussion, suppose an Attorney General would send his enforcement officers into a given area where these amusement machines are all over the lot, and, so far as interpretation and the stated objectives concerned here, they are supposed to be amusement games only.

Then he finds that there are schoolchildren, professional gamblers, or anyone else, standing up playing those machines, betting \$10, \$20, \$100. Then he decides, "Well, that was never intended and I am going to say that these machines come within the purview of that act," and takes action accordingly.

Is there any question in your mind but what the courts would uphold him in it?

MR. KING. The courts would certainly not uphold him, Mr. Chairman.

The CHAIRMAN. I doubt it very seriously under the language of the bill, if I know anything about reading language.

MR. KING. Forty-nine States and part of the fiftieth have State laws.

The CHAIRMAN. I know that, and we are not talking about that. That is a responsibility of the local officials.

Let us see what authority we are giving to a Federal official, the Attorney General here, and see if it does what he intends to do.

MR. KING. If I understood you, you are concerned with the danger that the Attorney General might, relying on this language, in his own judgment and discretion, take action to compel the manufacturers of amusement devices to comply with the Johnson Act. Is that it?

The CHAIRMAN. No. With this bill, not the Johnson Act.

MR. KING. Well, the Johnson Act as amended, or with this bill.

In the first place, of course, this would immediately exempt from the Attorney General's authority by the way this definition is drawn, any device that is legal in the States where it is used.

As I say, these amusement devices—

The CHAIRMAN. Everybody knows that is only the State of Nevada and four counties in Maryland.

MR. KING. We are addressing ourselves now, are we not, to amusement devices, Mr. Chairman?

In other words, if I understood your question, it was: Is there a danger that the Attorney General, armed with this new law, will not only compel the manufacturers of these demonstrably gambling devices to comply, but he might also in his discretion try to compel the manufacturers of amusement devices to comply?



Did I misunderstand?

The CHAIRMAN. I am trying to determine as to whether or not he is given authority, under the bill, to determine that a certain manufacturer ought to not be manufacturing a certain type of machine, and he says, "This kind of a device is not permitted under the law," even though there has been all along, and still is, the intent for it to be used as an amusement device.

Mr. KING. Then, I think the first answer is, as I say, any device which, under the laws of any State, is legal, any device which is legal under the laws of any State is automatically exempted from this definition.

It is no longer within the scope of the act.

The amusement type machines are legal in almost every jurisdiction, except where there is the free-play problem, a handful of jurisdictions.

So talking about these two types of devices—

The CHAIRMAN. I am talking now about amusement types of devices, not the other kind.

Mr. KING. Yes. Most of the recognized amusement types of devices, and it is usually by litigation, by court decision rather than statute, have been recognized by decisions of the highest court to be not gambling devices within the gambling laws of the jurisdiction.

Wherever that has happened it would seem to me quite plain that as far as that device in that jurisdiction goes, there would be no enforcement, no possible enforcement, of S. 1658.

That, in truth, would be true if some court in some jurisdiction said that this gambling type machine was not a gambling device.

The CHAIRMAN. In other words, you say that the amusement type of devices that you refer to here are legalized in most of the States of the Union?

Mr. KING. Yes.

The CHAIRMAN. Do you have a record of those States?

Mr. KING. I believe so. I believe I could easily summarize the States which have held that the free game, per se, is a thing of value.

That means you have the three elements. You put your money in. Everybody concedes that on a pinboard table there is some chance and some skill. Nobody has ever successfully argued that it is all skill. So, you have your money, your consideration, you have your chance, and if the free game you win, to play the machine, is a thing of value, then you have a prize, and the three elements of gambling, and these machines would be illegal.

There are other variants that do not have the free-game attachments at all. I think I could quite easily indicate generally, anyway, the jurisdictions where these machines are illegal or where there is a question about them.

The CHAIRMAN. Would you supply for the record the States where amusement type of pinball machines, as we are referring to here, are legal? Can you supply that for the record?

Mr. KING. Yes, I will.

(The information referred to above follows herewith:)

Since the amusement type pinball machines which award free games strictly as part of the amusement feature are legal in most jurisdictions, I shall try to enumerate those where the devices have been outlawed by statute or by applicable court decision. The problem arises over whether the free game,

per se, is a "thing of value". Most courts have held that it is not valuable—and hence that the machine is not a gambling device because it gives no "prize". The leading authority on this point is *Washington Coin Machine Assoc. v. Callahan* 79 App. D.C. 41, 142 F. 2d. 97.

I should also caution that in some areas the legality of these machines has never been formally passed upon, and that there are local municipalities, etc., which have banned or restricted their use by local ordinance. But the only States which presently treat them as gambling devices are: New York, Connecticut, Florida, Texas, Iowa, Wisconsin, and Ohio.

New York and Florida have an identical statute (McKinney's Consol. Laws Anno., Penal Code Section 982; Fla. Stats. Anno. Section 849.15), which specify among the considerations which may not be given by a coin device any "thing of value \* \* \* or the user may secure additional chances or rights to use such machine, apparatus or device." In Florida this has been interpreted to include free games by 1942 Op. Atty. Gen. 762, and in New York, in *People v. Gravenhorst*, 32 N.Y.S. 2d. 760 (though in the *Gravenhorst* case the court was actually considering a gambling type machine.)

In Connecticut the statute (Conn. G.S.A. § 53-278) is general, but has recently been interpreted by the courts to include free games in *Farina v. Kelly*, 162 A. 2d. 517. In the *Farina* case, also, the court was actually considering a gambling type machine. And compare *Crystal Amusement Co. v. Northrop* 118 A.2d. 467. In Texas, the statute is general (Vernon's Penal Code Anno., Art. 642a, formerly Art. 619) in specifying that the machine will be regarded as a gambling device "if anything of value is bet thereon." The Texas courts have specifically held that free games, per se, are things of value. *Hightower v. State*, 156 S.W. 2d. 327 (Tex. Civ. App.); *Martin v. State* 162 S.W. 2d. 722 (Tex. Crim. App.). In Iowa (Iowa Code Anno. § 726.5) the statute proscribes any "device with an element of chance attending its operation" and the Iowa courts have held free games to be things of value. *State v. Wiley* 3 N.W. 2d. 620. In Wisconsin, where the statute is general (Anno. Wisc. Stat. § 945.01) free games have been ruled to be things of value by 30 Op. Atty. Gen. 470 (1941).

And similarly, in Ohio, the general statute (Page's Ohio Rev. Code Anno. § 2915.15) has been interpreted by the courts to include free games as things of value. *Westerhaus Co. Inc. v. Cincinnati* 135 N.E. 2d. 318.

Mr. WILLIAMS. In those States where free games are considered to be something of value, and which prohibit the operation of that type of pinball machine, would it then be incumbent upon the Attorney General to declare that to be a gambling device if shipped into those States?

In other words, would that type of machine be subject to this act if its destination were one of those States and not subject to the act if its destination were in one of the States in which it was legal?

Mr. KING. No, in my opinion, anyway, Mr. Williams, it would not, because the thrust of this definition is the opposite. The thrust gives the Attorney General, in my opinion, a clear standard of what is a gambling device. He has the burden, of course, of exercising a prosecutive discretion, but you have to exercise that in every case—is it a crime or isn't it? He has to determine, under the new language that this bill would provide him as a guide, whether or not the machine is designed and manufactured for gambling and whether it performs the named functions; distributes, by an element of chance, money or property or a right to money or property.

If he decides that it is that kind of a machine, then the exclusion would simply exempt machines that he has otherwise found to be gambling devices.

So, he would not have any obligation to enforce the provisions of this act with respect to the shipment of a device that he found not to be a gambling device into areas where their public policy held them to be the contrary.



Mr. WILLIAMS. In other words, the Attorney General can make a finding that any given machine is not a gambling device, not withstanding the fact that the State into which it is being shipped may have decreed by legislation or court order that it is a gambling device?

Mr. KING. Yes.

Mr. WILLIAMS. And in that case, the Attorney General's opinion prevails?

Mr. KING. This would all ultimately be resolved by the courts, of course. But in that case, if the Attorney General decides that this particular machine is not a gambling device under the standards set forth by Congress in S. 1658, then it does not matter that some State under policies of its own has held it to be a gambling device.

For instance, there are, in local jurisdictions, city councils, just the point you raise. It is a problem sometimes. School kids go around and there is no gambling, but the school authorities just do not like these around. So, a local city ordinance will either ban these things or put them outside of school districts. Sometimes they will do that by just putting them under the ban of gambling devices.

That is a local policy problem that really, in my opinion, would not be within the sweep of this act or a concern of the Federal Government in controlling interstate commerce.

Mr. WILLIAMS. As I understand it, this bill goes to the transportation of these machines in interstate commerce.

Mr. KING. Yes, sir.

Mr. WILLIAMS. Of course, once it reaches the State where the operation of it was in violation of the law, then the State law would take over there.

Mr. KING. Or if it is manufactured in the State—one of the large manufacturers of the old one-arm bandits today is up in Maryland—he can serve the Maryland market with no problem under the Johnson Act.

The CHAIRMAN. Did the Senate include an amendment to the effect that it would not be applicable to a State where the State had legalized this particular type of machine.

Mr. KING. Yes. And this alters the original Johnson Act structure, Mr. Chairman. The original Johnson Act said that the interstate transportation of these devices is illegal except to or from a jurisdiction which expressly passes legislation authorizing the importation of the device.

This was a rather new wrinkle in Federal draftsmanship. It puts the burden on each State legislature to pass a bill that said, in effect, "We do not want the Johnson Act to apply in our jurisdiction."

I think the Attorney General explained this morning that Nevada did that. Maryland has never done it.

So, Maryland has never taken this positive step that is necessary to exempt itself from the operation of the Johnson Act. As I read this present language it eliminates that requirement and just says now that if the device is legal under the laws of the jurisdiction, then importation and exportation to and from that jurisdiction are not covered by the Johnson Act.

The CHAIRMAN. I thought you answered just the contrary to Mr. Williams' question of a moment ago. That is the reason I asked you.

Would this proposal be applicable to coin-operated bowling alleys?

Mr. KING. In my opinion, clearly not, because they do not give, by the elements of chance, a right to receive money or property. Bowling alleys are generally recognized to be games of skill. I do not know whether you could argue that there is an element of chance in shuffleboard or not, but that would be the first question that you would have to pass on. The second question would be whether there was any kind of payoff, any kind of reward, money, property, or a right to receive money or property, controlled by the operation of the machine.

The CHAIRMAN. You do not think it is applicable to shuffleboards, then?

Mr. KING. No, I do not.

The CHAIRMAN. What about mechanical guns?

Mr. KING. No, for the same reason, Mr. Chairman. There are giving amusement, really. You pay your coin and you shoot the gun or you play the shuffleboard, whatever.

You are simply buying the use of the machine.

The CHAIRMAN. Are there any further questions?

Thank you very much, Mr. King, for your testimony and the demonstration which you have brought to the committee which, of course, will be referred to in the record in the best possible way the reporter can do it.

I imagine it is going to be interesting reading. I know you have gone to some length to get these machines here and we want to thank you for your troubles and courtesy in bringing this testimony to us.

Mr. KING. Thank you, Mr. Chairman.

May we withdraw the machines now, or will the committee have further use for them or desire to look at them? We would be glad to set them up and leave them in the back of the room if the committee feels it would like to look at them further.

The CHAIRMAN. As a matter of expedition, and in order to make way for the usual work to go on here, it might be advisable to remove them entirely.

Mr. DEVINE. May I ask one question before the witness leaves?

The CHAIRMAN. Yes.

Mr. DEVINE. Mr. King, is there any need for those three items that you pointed out, and I cannot give you the names, but the business at the top, and the bottom, on the gambling type machine, need for those to exist in the machine unless it is a gambling device?

Mr. KING. None whatsoever.

Mr. DEVINE. And those are not present in the machine designated as a machine for amusement only?

Mr. KING. That is correct. It would be completely uneconomic and a waste to put them in.

Mr. DEVINE. Then, perhaps this is an oversimplification, but that is a test that could be used by the court or by the U.S. attorney in determining whether the machine in question was manufactured for gambling purposes?



Mr. KING. For this machine, Mr. Devine, this gambling type of machine. But I would hope that the committee would not try to describe these three features, as in 1951 they said "drum or reel with insignia thereon." The generic definition which is here, which describes a machine not in terms of what it looks like or what its component parts are, but in terms of what it does, is a much easier standard to enforce.

It is sort of like making a murder a crime, instead of talking about murder with an ax, murder by poison, murder by strangling, and that sort of thing.

Mr. DEVINE. But for the record, would you again say what each of those three things are, the top business you referred to, and so forth?

Mr. KING. Yes. Three of the features that most clearly distinguish this particular gambling adaptation of the pinball machine are, first, the multiple chance selector device, which is a series of rotors that operate by chance in the back of the machine, which are motivated when you drop a coin in the front, and they operate independently of the play so when you drop a dime the rotors go around and may or may not give better odds. That sets the odds.

The second feature is the knockoff button replay feature which makes it possible to convert free games won on the machine into a record locked inside the machine, as the free games are knocked off and paid off.

The third device that I mentioned, which simply is expensive and would not be on a machine that was not adapted to gambling, is what is known as the reflex unit which automatically corrects the odds to keep a certain level in favor of the house. What this device does electronically is really the equivalent of putting plugs in the old one-arm bandit rackets.

Mr. DEVINE. But there is no need for any of these three devices in a machine for amusement only, is that correct?

Mr. KING. That is correct; yes, sir.

Mr. DEVINE. That is all. Thank you very much.

The CHAIRMAN. I notice in the Senate report on S. 1658, there is included a letter from the Department of Justice, containing the following statement:

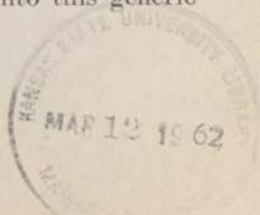
While the proposed bill thus covers only pinball machines which are "designed and manufactured primarily for use in connection with gambling," it has been suggested that specific language be included in the bill permitting pinball machines to be imported into States where such machines are lawful. The following language would embody this concept in the proposed bill.

Amend section 3 of S. 1658 by adding the following proviso at the end of the first proviso: "Provided further That it shall not be unlawful to transport in interstate commerce any device commonly known as a pinball machine into any State in which the transported device is specifically enumerated as lawful in the statute of that State."

Do you know for what reason that language was not included?

Mr. KING. No, I do not. I do not think I am familiar with that proposal, except that it was probably taken care of in more general terms by the proviso at the beginning.

I would rather imagine that the Senate, instead of talking about pinball machines, which would be, again, getting into this generic problem—



The CHAIRMAN. Where is the language you refer to?

Mr. KING. At the top of page 2, line 4, S. 1658:

*Provided, That the provisions of this subsection shall not apply to parimutuel—  
and then there was added—*

*or other betting or equipment or materials used or designed for use at race  
tracks—*

*and then was added—*

*or other licensed gambling establishments where betting is legal under appli-  
cable State laws.*

Those phrases were added by the Senate and I imagine they were added to remove from the definition gambling materials in these categories.

The CHAIRMAN. It just does not seem to me that that covers what the Deputy Attorney General, Mr. Byron R. White, mentioned at all. This refers to licensed gambling establishments where betting is legal under applicable laws.

This has to do with pinball machines that are lawful in the State, that do not come in the category of the gambling devices.

Mr. KING. I was only speculating because that language was added. Actually, in my own opinion, that is not necessary because the definition of "manufactured and designed primarily for use in gambling" is a perfectly adequate and clear definition, and it would be unnecessary, and it might be a trap, if you tried to specify pinball games of one category, pinball games of another category, and other devices down the line.

The CHAIRMAN. The only reason I raise this question is because I think it should be well to determine who is to come under it and who is not.

I do not think we should say it is not intended for one purpose and then later on find out that it has been interpreted differently. That is the only thing. Of course, the simple way to do it is just to say that all of them are covered or not covered, and then everybody would know where they are.

Mr. KING. The state of the law for the last 11 years has been precisely the converse, Mr. Chairman. In 1951, when the original act was passed, the intent was to strike out this kind of gambling operation, and the intent is still there.

The effect has never been accomplished.

The CHAIRMAN. I am encouraged somewhat by all of this discussion about giving as much recognition to the State law as possible. Thank you very much. We appreciate your testimony.

We will now be in recess until Thursday morning at 10 o'clock.

(Whereupon the hearing in the above-entitled matter recessed at 3:45 p.m., to reconvene at 10 a.m., Thursday, January 18, 1962.)



## GAMBLING DEVICES

THURSDAY, JANUARY 18, 1962

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
*Washington, D.C.*

The committee met at 10 a.m., pursuant to call, in room 1334, New House Office Building, Hon. Oren Harris (chairman of the committee) presiding.

The CHAIRMAN. Let the committee come to order.

The committee will continue hearings this morning on H.R. 3024, introduced by our colleague from Florida, Mr. Cramer; H.R. 8410, by our colleague from New York, Mr. Halpern; and the Senate bill, S. 1658, to amend the act prohibiting the transportation of certain gambling devices in interstate and foreign commerce.

I observe that we have a good many witnesses to be heard yet. I have a number on the list and we will do our best to accommodate everyone as expeditiously as we can and I would like to ask the patience and indulgence of all those who wish to be heard. The committee will try to hear everyone who desires to be heard on this subject.

We have several of our colleagues here interested in this program and at this time we should be glad to hear Mr. Cramer, the sponsor of one of the bills.

### STATEMENT OF HON. WILLIAM C. CRAMER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. CRAMER. Thank you, Mr. Chairman.

The CHAIRMAN. We are glad to welcome our colleague from Florida. We appreciate his interest in this subject which he has manifested over a period of years.

Mr. CRAMER. I thank the committee and appreciate the opportunity of testifying before the committee in behalf of this legislation, favoring it, having introduced it as far back as May of 1959. At that time it was recommended by Attorney General Bill Rogers, it being one of the numerous weapons proposed by the Attorney General then, and proposed now by Attorney General Kennedy, that would have the effect of stamping out syndicated and organized crime. That was the announced objective of the proposed legislative measures.

At the last session, as I am sure the members of this committee recall, the Judiciary Committee of the House, somewhat different from the action taken by the Judiciary Committee of the Senate, had jurisdiction over some seven of these anticrime bills. Five of them were passed by the Congress last session. On the Senate side in the other body, the Judiciary Committee took jurisdiction over this bill as well.

I had introduced a bill which included this, along with other measures, in an omnibus bill form that would have had the Judiciary Committee of the House act, as did the Judiciary Committee of the Senate on all the matters.

However, I am delighted that the Interstate and Foreign Commerce Committee is, as it properly should from a jurisdictional standpoint, handling this particular legislative matter.

As I say, the objective and purpose of this total package of bills was to primarily fight organized and syndicated crime and gambling activities. It perhaps is not in some instances the gambling itself that is as reprehensible as some of the byproducts, such as prostitution, on the syndicated gambling operations basis, which are known to exist, the byproducts of which, for instance, in my district, are 22 unsolved gangland-style murders.

This is the reason for my initial interest and concern about syndicated crime's national activities in this country. It is common knowledge that from five to ten thousand dollars is the cost for the Mafia, or for the Black Hand, of getting rid of competition, for instance, in the Bolita rackets where they exist, in the numbers game. If you have competition you get rid of them by paying someone to come in and do the job and move out, and that is what has happened. For instance, in my district there are 22 unsolved gangland-style murders that have been known to arise out of gangland syndicated criminal activities.

There is no question but what, to some extent, slot machine operations are a part of this total national picture. The total national cost of this syndicated operation, in addition, of course, to the undermining of the basic morals of our communities, is approximately \$22 billion a year that is taken from the pockets of the people of this country, with, incidentally, little income tax being paid on it, by the syndicated gangster-type activities throughout the Nation. This is the testimony of the Attorney General and of J. Edgar Hoover as well; so we are not dealing with a small matter.

This is part of a total large package that includes prostitution, that includes narcotics, that includes in addition to that the efforts to try to control in many places in this country the local sheriff, the local law enforcement authorities, and thus undermines the basic governmental structure of our country as well.

Therefore, put in that context, and in the context of this being part of a total anticrime package, I think it gains greater significance than perhaps an examination of the bill itself might indicate.

Now, last year the Judiciary Committee of the House enacted, as I say, some five measures, one of which is similar to this in some respects, outlawing the transportation of "wagering paraphernalia" in interstate commerce. This did not come before this committee because it was an amendment to title 18 of the criminal statute, and therefore went to Judiciary. Probably it involves some of the questions that are involved in this legislation as well. For instance, in legislating on that matter, bingo was specifically excluded in the report and the Attorney General testified and it was generally agreed that bingo was not intended to be included, in that it was not within the reprehensible realm of syndicated gangster-type activities that was at the heart of the purpose of this legislation as a total package.



So we solved that problem, speaking of the Judiciary Committee, as I recall, by including in the committee report a greater explanation of exactly what was intended by the definition to be included and excluded without specifically describing each and every type of "gambling paraphernalia." That might be of some assistance to this committee in considering some of the obvious problems that arise as a result of the definition contained in the legislation passed by the Senate and the legislation which I introduced as well.

I realize there are some problems in this legislation, but the need for it outweighs the problems which can be met by this committee and by the Congress in attempting to define what is intended to be included in "gambling devices."

I have a statement that I would like to submit for the record and then I would be glad to discuss the bill itself in greater particular, hoping that my testimony may be of some help to the committee.

I would like, for instance, to take just a minute to discuss the bill which I introduced, which is H.R. 3024, which was introduced on January 23, 1961, and previously in 1959 in the 86th session of Congress, as I say, as recommended by then Attorney General Bill Rogers. I discussed this matter with your distinguished chairman. I am sure he recalls. He at that time expressed a great deal of interest and, as I recall, considered introducing a bill himself, and I believe the chairman did, on the similar subject matter.

The Senate bill, so far as I am concerned, in its amendments, is acceptable and is preferable so far as the amendments are concerned over the bill which I introduced. I am sure that the committee is familiar with their efforts, No. 1, for instance, to try to eliminate the foreign commerce aspect of the bill.

I do have one question, if the committee has before it the Senate bill, S. 1658. On page 1 of the bill the other body eliminated under section 3, line 22, its application to foreign commerce. As I say, I have no objection to that. Later on in the bill, in subsections (a), (b), (c), (d), and (e), where the registration provisions are contained, the act does refer to registration where the person involved or the manufacturer is engaged in interstate or foreign commerce, as you will see on line 3.

I think the committee would do well to clarify whether it was the intention of the Senate—and a reading of their report doesn't indicate it; they specifically wanted to exclude its application to the manufacturer of gambling devices that are transported in foreign commerce—at the same time, however, to require registration on the part of manufacturers and other persons dealing in this equipment, even though it were to be transported in foreign commerce.

The CHAIRMAN. What kind of equipment are you referring to now?

Mr. CRAMER. The gambling devices which are defined in the bill. I wonder when it comes to the registration section whether it was the intention of the other body to include those manufacturers, for instance, who only transport in foreign commerce under the registration provisions.

In other words, there seems to be an inconsistency. Foreign commerce is excluded from the criminal prohibitions, but it is included in

the registration section. Does the committee see the point? In section 3(a) it reads:

It shall be unlawful for any person during any calendar year to engage in the business of manufacturing, repairing, reconditioning, dealing in, or operating any gambling device if in such business he buys or receives any such device knowing that it has been transported in interstate or foreign commerce, or sells, ships, or delivers such device in interstate or foreign commerce \* \* \*.

It is obvious if it comes in in foreign commerce, yes, it should be registered, but suppose he manufactures it for shipment in interstate commerce? Must he register? I just suggest that the committee consider that possible inconsistency in the draftsmanship of the bill itself.

The CHAIRMAN. You say it does exclude foreign commerce?

Mr. CRAMER. It does not. The prohibition does not, but the registration section does include foreign commerce, so it is obvious if a piece of equipment comes in in foreign commerce the person dealing in it, yes, should register; but suppose his business is solely for the manufacturing of equipment to be sold in foreign commerce? Then it is inconsistent to say that there is no prohibition against it, but that he must register.

If the committee will read—I am sure you are familiar with it—the Senate report you will see where the Senate intended to, and I think properly so, strike out the criminal prohibition as it relates to shipping in foreign commerce.

The CHAIRMAN. I would say to my colleague that I have heard a great deal of discussion about the report and what it intended, and we did ask the Attorney General some of these matters, but it has been my experience in observing matters of this kind, where it seeks to get to a particular problem, that when those who administer it want to get to a problem and use the language of the bill in getting to it, they pay little attention to what is in the report. That is the thing that concerns me about legislation of this kind where criminal penalties are involved, and I think the gentleman, being an astute lawyer and a very good one, and a very capable and able member of the great Judiciary Committee of the House, knows that it is the language that is included in the law itself that those who are going to get at the proposed or intended violation are going to depend on, and they are not going to pay much attention to the report.

They may for the next year or 5 years, but from our experience in observing what has happened over the long pull of many years I think the gentleman knows we have to be in criminal matters as specific as we can in order to meet the constitutional requirements in dealing with this kind of legislation. That is the reason that I would say to the gentleman that I think you better be talking in explicit terms as to what should be included in the language itself.

Mr. CRAMER. I agree with the chairman's basic premise. Obviously in a criminal statute it should be as specific as it is possible to legislate in accomplishing the needed objective. There isn't any argument as to the needed objective of stamping out organized and syndicated criminal activities in this country in my opinion.

Then the next question is: So how can we accomplish it? The committee is certainly going to have to give consideration to proper definitions and I think it is proper that the committee should hear all the available evidence on the question of proper definitions. I would



have no objection of course to the committee clarifying wherever it was needed in order to make it as specific as possible, but not destroying the accomplishment of the objective. I agree with the chairman's observation.

The CHAIRMAN. I am glad to have the gentleman's comments.

Mr. CRAMER. We met with the same problem, I say to the chairman—I was trying to be helpful in pointing it out—in the judiciary. We were met with that same problem and that was the way we solved it because it was the only alternative available, the objective that must be served being essential.

The CHAIRMAN. I agree with the gentleman, and the gentleman's committee did a good job, but I would say in all frankness to the gentleman with respect to one of those bills that was passed, which the gentleman had a great deal of interest in and certainly it was very good legislation—all five of them were in fact—I know from what has already been done in the administration of it, notwithstanding the assurances in a letter which was placed in the record from the Attorney General and signed by him, and the court that prevailed, and from the gentleman's committee in the statement on the floor of the House, that in looking into some of the things under the provisions of that law already those who have been investigating frankly say they do not know where they stand, and I don't think they do either.

Mr. CRAMER. Which bill is the chairman referring to?

The CHAIRMAN. That having to do with the transportation of any person in interstate transportation for the purpose of promoting gambling.

Mr. CRAMER. Yes; the interstate travel.

The CHAIRMAN. Yes.

Mr. CRAMER. Of course I assume that when the executive appears before a committee and testifies, it is doing so in good faith, and when it says its intentions and its objectives are such, to stamp out organized syndicated criminal and gambling activities in this country—

The CHAIRMAN. There is no argument about that.

Mr. CRAMER. I am not saying there is, and this is the objective that in carrying it out administratively the Justice Department and the FBI are going to uphold, and in good faith I think that the Congress has a right to rely on that. Now, if they don't live up to that presentation to the Congress, I can certainly be sympathetic to the chairman's observations.

What the Judiciary Committee intended to do was to spread the objective all over the record of the hearings on the floor of the House and in the Senate hearings I testified before the Judiciary Subcommittee. I sat on the subcommittee. There was no question in the minds of the members as to what they were intending to get at and I cannot understand why there should be in the mind of the Attorney General in enforcing it.

Mr. DINGELL. Would you yield to me very briefly at this point?

The CHAIRMAN. I am sorry to interrupt the gentleman, but since he dealt with these problems and there is overlapping jurisdiction, which we recognize, and certainly with the interest of the members of this committee and the interest of his committee, as I knew something

about these problems I wanted to use the experience. We always utilize our experiences in order to clarify whatever we are trying to do for the future. Yes; the gentleman from Michigan.

Mr. DINGELL. Mr. Chairman, I have been very much concerned about the same problem that the Chair has raised at this time and that is the problem of having this bill sufficiently clear and concise to adequately warn and apprise persons to be charged under the statute with the nature of the offense against them.

I am sure the gentleman is aware that basic statutory and constitutional law requires that a statute be specific enough in all regards to inform any person to be charged thereunder with the nature of the criminal offense with which he is charged. Am I correct?

Mr. CRAMER. I just agreed with the chairman that obviously Congress should attempt to be as specific as possible.

Mr. DINGELL. It is a basic constitutional requirement that it be sufficiently specific to apprise the defendant of the charges against him.

Mr. CRAMER. It is obvious a man has to know he is committing a crime, naturally, before he is guilty of it.

Mr. DINGELL. And to know exactly what the charge is under the statute. This is a constitutional requirement. A second thing that has concerned me about this is we are creating a vast body of legislative history on this statute. As I understand it, vagueness which requires legislative history to correctly construe the nature of the criminal offense does not sufficiently meet the constitutional requirements to satisfy and to make a valid statute. Am I correct on that?

In other words, what I am saying is this: When a criminal court must look to legislative history to understand what the Congress had in mind, then the statute is not sufficiently explicit to meet the constitutional requirements. Am I correct on that point?

Mr. CRAMER. It is up to the court to determine the fundamental constitutional question as to definition. I don't think that even the wording that is presently in the proposed legislation would violate the constitutional provisions that you mention, the constitutional requirements, but I say that from the standpoint of good legislation this committee should attempt to be as specific as it can, and if it determines that instead of generally describing these gambling devices it should specify them, the committee has that authority.

However, in doing so you are running the risk of those persons involved in manufacturing this equipment and those who get the profit from it, which are really the ones we are after of course, that they would devise a new machine which is not within this definition, which is exactly what they did when the previous Johnson Act was passed. You have to have a drum, you have to have a coin, so they devised something that didn't have a drum or wasn't coin operated and they got around it.

That is why the language is broad without specifically describing each and every piece of equipment, because it would have temporary application.

Mr. DINGELL. Mr. Chairman, I appreciate the chairman's kindness. I would like to pursue this matter a little later.

The CHAIRMAN. As soon as the gentleman finishes his testimony I intended to give every member a chance to ask a few questions.



Mr. CRAMER. My testimony is about completed, but to further help clarify this travel in interstate commerce, of course I just mentioned the syndicated, ganster-type, sawed-off shotgun, killings where they blow off the head of the person. They always aim at the head so he can't talk, even if they don't kill him. They don't mind shooting him in the presence of his wife, which happened in 1960 in my district. The husband and wife were stepping out of the automobile, coming home fairly late at night, and somebody steps up and shoots him.

I am sure the distinguished gentleman from Florida, Mr. Rogers, remembers reading it in the paper. Someone stood up and fired a sawed-off shotgun and practically blew his head off, and there have been a number of these, right in the presence of his wife as he stepped out of the automobile, the implications being clear that the person involved was involved in a gambling activity.

This person and some of the other killers involved in the 22 killings must have been shipped in and out. The present sheriff sent a letter to the Attorney General, for instance, a few years ago, and asked the Attorney General to let the FBI come in and investigate this case. The Attorney General said "No," he didn't have jurisdiction because there was no Federal crime involved.

The objective of the travel statute was to permit the FBI to come in and principally to help the local law enforcement officials, making available to them the factual information that only an interstate investigative agency like the FBI could find out. The person doing the killing shipped in and shipped out with the local law enforcement hands being tied. That was an example of the concept behind the entire State travel.

It is done otherwise, in prostitution, and everything else. It is common knowledge that the prostitutes are shipped in, stay in a place for a few weeks, and then they are shipped out. They go to another place. They are shipped out to another place, and this is a nationally syndicated operation. This is why the local law enforcement officials have difficulty. That is why their hands in many instances are tied. They don't know who the prostitutes are, because they don't stay long enough to be apprehended; so these are the problems and that was the concept behind the interstate travel, and I trust the Attorney General will administer it in accordance with his own testimony before our committee, and likewise this legislation.

It is obvious that the objective of the legislation is to plug the loopholes of the Johnson Act, which in its present wording of course eliminates the nondrum type of gambling device and also eliminates the noncoin type in its second provision if it doesn't actually deliver a price, if it is a credit that is given instead.

The coin-operated machine manufacturers are not really the culprits. The culprits are the ones who buy the machines who are involved in nationwide or areawide syndicated crime activities. They are the ones that the administration is after and it is my objective to try to do something about, not the corner drugstore that isn't involved in this problem at all, so the concept of the legislation was to try to plug the loopholes.

If the legislation itself is not artful enough to accomplish it, certainly this committee should in its wisdom consider proper amendments to accomplish that objective. Of course the registration section

is one phase of it that is presently in existence as it relates to the "one-armed bandits" or the slot machines.

This bill merely proposes to make it a more workable device to make it possible to enforce the criminal provisions. I think the legislation is essential in this general fight against organized and syndicated crime. It is one of the arms. There are two more still in the Judiciary Committee that I hope we will be able to pry loose this year. Immunity of witnesses is one. Obstruction of investigations is another.

I hope we can pry those loose and I think if this package of some eight pieces of legislation, five of which the Congress passed with substantial majority last year, will all be enacted into law, then we can see if it will stamp out organized crime. It certainly should go a long way toward accomplishing our objective, and then Congress can take a look at the problem again.

The thing I want to impress on this committee is it has far more significance than just this one piece of legislation before the committee. Obviously there are going to be a number of people testifying, for instance, on the basic question of whether or not the exclusion from the application of the statute of those States that make the use of certain pinball machines and such legal, which the Senate attempted to exclude, was adequately accomplished or not. That is something this committee should consider as well. If statutorily, it is legal within the State, then obviously the Federal Government should recognize that in legislating on the general national question.

I would be glad if I can, Mr. Chairman, to be of any further help to the committee.

(The statement of Mr. Cramer follows:)

TESTIMONY OF HON. WILLIAM C. CRAMER, A REPRESENTATIVE IN CONGRESS FROM  
THE STATE OF FLORIDA

Mr. Chairman, in the last session I introduced H.R. 3024, the same as the bill I introduced in the session before, to implement the recommendation of the Attorney General that the 1951 law forbidding the "interstate transportation of any gambling device," which now applies only to slot machines, should be broadened to include any other device manufactured specifically for gambling purposes, and also to prohibit the shipment of such gambling devices out of the country.

I cannot, thus, recommend too strongly again that consideration be given to legislation designed to curb and to put out of business the nationwide syndicated racketeers and hoodlums who have exhibited a remarkable talent for escaping the clutches of Federal, State, and local law, all the while hiesting the good money of our citizens in an overall gambling operation that runs into 22 billions of dollars.

I am not alone in my desire to stamp out the illicit transportation of gambling devices, which might not make the racketeers lily-white but which would help to fatally hit them in their pocketbooks. Indeed, I am supported not only by the recommendations of the Attorney General but also by those of his predecessor, Mr. Rogers. In addition, the Post Office Department, the Secretary of Commerce, and Mr. Hays, in his capacity as Assistant Secretary of State, all failed to raise any objection to this recommended legislation. Nor did the Interstate Commerce Commission object.

I think that we are all aware by now, especially after so many years of hearings by the McClellan and Kefauver committees and by others, that organized crime has gained a fantastically effective foothold in our society. Millions of people unwittingly contribute to the coffers of the racketeers by gambling away their funds, often on a pathetically small basis. But by placing small bets, they are also unwittingly financing prostitution, bribery, corruption of local officials, and narcotics, for the funds to carry on these activities come from gambling.

The hearings held the past few years have also brought out the intricate organization that holds gambling together. Bossed by a few, organized gambling has



its outlets in nearly every section of the country. The local gambling overseers are closely related to one another, often through family connections. But of one thing we can be positive—the prohibition of the interstate shipment of gambling devices from State to State would severely crimp the involved web of gambling, if not eliminate it altogether. And without gambling funds, the other illegal activities would largely dry up.

In recommending the legislation, as did his predecessor, Attorney General Bill Rogers, the year before, Attorney General Kennedy stated, when he appeared before the Senate Committee on the Judiciary in support of legislation to curb organized crime and racketeering last June 6, that the 1951 Johnson Act forbidding, in general, the interstate transportation of any gambling device and requiring manufacturers of and dealers in gambling devices to register annually with the Attorney General, contains serious flaws and loopholes. He said that a major revision is necessary.

The Johnson Act, Mr. Chairman, covers the so-called one-arm bandit. While it is effective as far as it goes, it hardly covers the main inventory of gambling equipment. Noticeable by their absence of inclusion are roulette wheels, pinball machines, and similar devices.

While the one-arm bandit is a continuing menace to society, other equipment constitutes an equally serious menace, and this of necessity includes the roulette wheel, which is a source of vast funds for the hoodlums. In certain sections of the country, the wheel is almost king of its domain, meaning that its very presence constitutes influence, for in gambling centers the game of roulette is an attraction of unbelievable sorts.

What is sought is an expansion of the Johnson Act, one that will extend to all gambling devices.

The Attorney General only the day before yesterday testified before this committee that: "Hearings of the Select Committee on Improper Practices in the Labor and Management Field established that the ingenuity of the gamblers has proved more than equal to the Johnson Act. The time has come to tighten the law to cope with new devices not covered by the Johnson Act but which are clearly used for gambling."

Continued the Attorney General: "Testimony before the select committee established that many of these machines appear to be amusement-type games but are really subterfuge devices. They are not controlled by the Johnson Act because they are not coin-operated, do not pay off directly, or because they have no drum or reel as in conventional slot machines \* \* \*."

Clearly, Mr. Chairman, we are now dealing with a problem in semantics. It seems clear that the gamblers have been able to continue on with their nefarious activities by utilizing machines not covered by the Johnson Act, or have possibly come up with substitutes.

Also proposed under the new legislation is a provision that requires persons engaged in business involving gambling devices, knowing they have been transported in interstate commerce, to register with the Attorney General. I heartily favor such a requirement.

May I say that I am pleased and heartened to note the Attorney General's great interest in stamping out the evils that allow organized crime to flourish in this country. And, may I again suggest to him, and to the Congress, that the due and proper consideration be given my previous proposal that an Office on Syndicated Crime be created.

As I suggest in my testimony before the House Committee on the Judiciary on last May 17, in support of anticrime legislation, it would be the duty of this Office to "assemble, correlate, and evaluate intelligence procured by other agencies, both Federal and State, relating to the operations of organized crime."

The Office on Syndicated Crime would fill in the missing gaps. To me, it is absurd that we do not have in this country some official entity charged with the responsibility of keeping track of the hoodlums and what they do. More specifically, this Office would take over the task of chasing down facts and figures that would make the detection and erasure of crime so much easier. At present, one sheriff has to go to the next sheriff, and so up the line, in order to ascertain the proper facts.

The Office on Syndicated Crime would serve as a nerve center for a coordinated war on racketeering. It would act, as I have said before many times, as the conduit for maintaining a constant flow of communications between law enforcement units. Properly administered, the Office should be able to assemble and distribute to all law enforcement agencies, Federal, State and local, the information necessary to ferret out, observe, and eliminate criminal activities.

Thus, for the first time the U.S. Government would have an official arm charged with the duty of amassing the proper facts necessary to the war against organized crime.

Mr. Chairman, this menace to our society becomes more deadly serious each year. As we continue to resist the inroads made by our enemies from without, we sometimes neglect to place the proper emphasis on our war here at home. The warlords of big crime, operating on a scale that makes the Capone gang look like penny-ante gangsters, are clearly bent on destroying our society through moral destruction, just as communism seeks to destroy us through other means. It is a problem that deserves the immediate attention of the Congress, and any legislation that will prevent further shipment of gambling equipment, any type of such equipment, will be of immediate and lasting benefit to our citizens.

The CHAIRMAN. Mr. Williams, any questions?

Mr. WILLIAMS. No questions, Mr. Chairman.

The CHAIRMAN. Mr. Schenck?

Mr. SCHENCK. Mr. Chairman, thank you. I want to commend our colleague from Florida for his very longtime and effective interest in this very important question. If my memory serves me correctly, it was the gentleman from Florida who proposed the first such piece of legislation to accomplish this purpose back in 1959, I believe. I think he is to be commended for doing that.

Now, I have heard our learned colleague refer frequently to organized crime and syndicated crime, and I wonder if, in your opinion, there is any adequate way that those terms can be defined and, if such acceptable definitions can be developed, would it be helpful in the administration and prosecution of this gambling equipment?

Mr. CRAMER. I will say to my distinguished colleague, and I appreciate his far too complimentary remarks, I had introduced H.R. 6990, which I mentioned, which is an omnibus bill dealing with this general subject matter and including this specific legislation before this committee as one of the titles.

In the hearings before the Judiciary Committee my statement on the bill, and the bill itself, are contained, and in that bill I attempted to devise a definition of organized or syndicated crime. I felt that was the sound approach, and then let's have everything that can be done in that fashion properly applicable. Let that definition govern.

The Judiciary Committee disagreed. Then there is some question as to its proper applicability, particularly in this instance, a serious question, mainly because we are amending an existing statute that is not related solely to stamping out organized and syndicated crime, but I felt in many instances the definition should be applied and I also felt that there should be established an office on syndicated crime under the Attorney General's direct supervision that would have the duty of doing two things that aren't done today, and I don't think too many people understand that in the FBI and the Justice Department there is no correlating agency. There is no agency with the responsibility of correlating all available investigative material on Mr. X. If he is believed, for instance, to be in Chicago or somewhere and believed to be involved in nationwide criminal activities and the local sheriff or the local State's attorney submits his name to the FBI and says, "I want all the information you have on Mr. X that is proper, that is prohibitive, that is of value, that you have," he gets only the information from the FBI files.

I placed in the Congressional Record, and I placed in the records of the House Judiciary Committee hearings some 37 investigative



agencies in this Federal Government that have the duty of looking up whether Mr. X pays his income taxes, whether he is involved in narcotics operations, and right on down the line.

Now, there is no agency in the Government today that correlates the information acquired by the millions and millions of dollars spent for investigative purposes as it relates to the specific functions of specific agencies, no agency that correlates that information on Mr. X, and don't you think Mr. X doesn't know that?

That is why it is difficult for a local law enforcement official to be able to get adequate information to do the job he should do in putting Mr. X in jail, because he is in violation of even a State law, because of the difficulty of correlating this information.

That is one function that is not being accomplished today that I think is essential, so I introduced the bill providing for an office on syndicated crime and defined syndicated crime in that instance.

The second is there is no agency that gathers all this information, gathering it once, evaluating it, and correlating it. I don't want a lot of improper information getting out that has not been substantiated, or that isn't of value, but those three functions are not being accomplished today in law enforcement.

It has nothing to do with the Federal police force. I am as much opposed to that as anybody else, but I do think the Federal Government has the responsibility of making available to local law enforcement authorities existing investigative information, properly correlated and properly evaluated under the direction of the Attorney General. He is the one to decide what should be turned over as proper information to the local authorities for their prosecution.

We were not successful in that instance before the Judiciary Committee. I did discuss it on the floor of the House. The gentleman raised a serious question. I frankly do not think it has application, however, to this specific bill from a definition standpoint, first, because it is too difficult to accomplish an adequate definition, and, secondly, because we are amending an existing statute which is not limited to syndicated crime.

MR. SCHENCK. Does the gentleman feel that the S. 1658 definition in section 2 on page 1, line 5, is specific enough to define the type and kinds of equipment used for gambling, generally speaking, and without running the risk of having someone develop a new device to circumvent this?

MR. CRAMER. Yes. I don't think there is any question about it being all-inclusive in that respect in that it takes the present specific drum-type operated machine and that remains on the statute books. That is why the second paragraph starts:

Any other machine—

in an effort to close those loopholes of non-coin-operated machines, nondrum machines, so that you have a broad coverage, a broad definition—

other machine or mechanical device \* \* \* designed and manufactured primarily—

and I think "primarily" is a very important word—

primarily for use in connection with gambling \* \* \*

It may be well for the committee to consider a definition of gambling from a standpoint of what you are attempting to accomplish. Maybe that is where the problem is. In other words, the corner drugstore is certainly not involved in organized crime or criminal activities as such that this general legislative package is intended to get at.

Maybe the committee should consider a definition of what is meant by gambling, which is a difficult thing, however. We tried to do that in the Judiciary Committee. It is a difficult thing. You are dealing in an area that is very difficult to define so you pretty much have the choice: Are you going to have a broad prohibition in order to accomplish the objective and thus prevent these syndicated criminal operators from using their ingenuity in coming up with something not specifically included; or are you going to run that risk by trying to specifically define the equipment? I don't think you should.

Mr. SCHENCK. One other question, Mr. Chairman. Line 10 on page 1 refers to the element of chance. Is it necessary to include in there any language to include or exclude any equipment that has an element of skill?

Mr. CRAMER. I think that "chance" would be inclusive of games of skill. That is my horseback opinion, that if you are talking about an element of chance, skill, I think, would be included in that, because what you are after is any machine which will deliver any money or property as a result of a chance. Well, I think, obviously, skill enters into how good your chance is.

Mr. SCHENCK. That is all, Mr. Chairman. Thank you very much.

Th CHAIRMAN. Mr. Friedel?

Mr. FRIEDEL. Mr. Cramer, I want to compliment you on your statement and I think we all agree with the objective and purpose of this legislation. You kept repeating "syndicated and organized crime." That is what we all would like to stop, but I am afraid that the bill goes a little further than that.

Mr. CRAMER. It certainly does. There isn't any question about it.

Mr. FRIEDEL. I think some innocent people are going to get hurt. I think it is going to affect home rule. I think it is going to affect States rights. Certain pinball machines are used for amusement. They might have free games. Others are used for gambling devices. Some equipment is used for bingo. That is an element of chance. There is no skill in bingo.

Now, I understand that there is a cage that they have these numbers in, and if the church is running a bingo party and that equipment has to be repaired, they have to give 30 days' notice, I think, and register. I don't know whether that is included in this bill or not. There are a lot of things that come to my mind. We all agree with the objective and we want to help out, but I am afraid the bill goes a little too far when it uses the words "an element of chance." It might be 90 percent skill. It might be 10 percent chance. It says "an element of chance," so the Attorney General can interpret that as gambling.

Mr. CRAMER. Maybe some assistance would be the definition in the "wagering paraphernalia" act which was passed by Congress last session. We had to deal with a similar question.

I agree it is a tough one. The "wagering paraphernalia" act made it a felony to "send or carry knowingly in interstate or foreign commerce any wagering paraphernalia device used, or adapted, or de-



signed for use, in bookmaking, wagering pools, with respect to a sporting event for numbers, policy, bolita, or similar illegal games."

Mr. FRIEDEL. That passed?

Mr. CRAMER. Yes, and that indicates what our problem was and that is the way that definition was handled. I admit you have a similar problem here and it is something that the committee is going to have to consider.

Mr. FRIEDEL. In the State of Maryland we have four counties that have legalized pay-off machines. I think three of them have legalized slot machines and all four have legalized pinball machines. Would not this affect those four counties? I asked the Attorney General whether it would apply to these four counties and he said they would have to pass a new act in the legislature.

This thing is all up in the air and I don't know where we stand. I don't live in any of those counties. They are not in my district. I had the privilege of serving in the State legislature and there is no reservation in my mind that, even though the State passed a statute with local application, this exclusion would be applicable.

Therefore, the operation of those gambling devices in these counties would not be prohibited.

In Baltimore City where I live they license pinball machines. How would this bill affect Baltimore? I don't know what the revenue amounts to, but we need every penny we can get. Taxes just went way up again. I wonder how this will affect the revenue in Baltimore City.

I am not too sure about this bill and I intend to pursue this in our committee to find out if we can accomplish the objective without hurting innocent people.

Mr. CRAMER. There isn't any question in my mind but what the intention was within a given area or within a State in toto where the legislature has authorized the States or those communities to engage in this type of activity that this statute shall not be applicable.

Mr. FRIEDEL. I am not too sure that that is clear.

Mr. CRAMER. That may be, but that was the objective. I think the committee should explore to see whether it is accomplished. I think it is. There is a peripheral area, of course, where perhaps the courts have ruled on the question, that there not be a statute in existence. That is another area, but I think that this as worded accomplishes the objective.

Mr. FRIEDEL. That is all, Mr. Chairman. Thank you.

The CHAIRMAN. Mr. Younger?

Mr. YOUNGER. I too want to compliment our colleague for the very fine work that he has done in this field. I have one question: Out of your experience do you feel that there is too much latitude given to the Attorney General, as to the determination of whether a machine is manufactured for the purpose of gambling?

Mr. CRAMER. Certainly not under the present statute, and we don't have any experience under this proposed statute, I say to my distinguished colleague, because the Johnson Act presently is extremely specific.

Mr. YOUNGER. That is true.

Mr. CRAMER. And that creates the problem of enforcement. It is too specific, so you have two avenues to go, either a general proposal such as that contained in the Senate bill that discusses generally

gambling devices, or trying to enumerate them, as was done in the Johnson Act.

If you enumerate them specifically, you run into the same problem as you did under the Johnson Act, and that is that they will devise new machines that don't come within that prohibition. I think that is the challenge the committee has to meet, and it can be met, perhaps by the language in the bill itself.

Perhaps some of the testimony of the other persons waiting to testify will be helpful. It is something the committee should consider. You have one of two routes to go. I, personally, favor the broad route that is all-inclusive that doesn't try to pin it down to specific-named machines, but still protects those that are legal.

Mr. YOUNGER. Then you have no fear at all of vesting in the Attorney General this vast power of determining what is manufactured for the purpose of gambling?

Mr. CRAMER. I wouldn't give the Attorney General blanket authority; no.

Mr. YOUNGER. This bill pretty much does that.

Mr. CRAMER. That is why I suggested maybe the committee should consider indicating in the legislative history, if not in the statute itself, what is meant by "gambling." That is one possible approach.

Mr. YOUNGER. Do you have any suggestions as guidelines that ought to be set up directly in the legislation to somewhat determine what is the power of the Attorney General and what guidelines he should follow in determining whether or not this mechanical device is manufactured for the purpose of gambling?

You have had a lot of experience in this field and I think you could be very helpful to the committee, because I believe all of us are somewhat concerned about this constant trend on the part of legislation of giving more and more determination to Government officials, affecting the lives of our citizens and business in this country, and I think we have to reach a point soon where we are going to be as specific as possible in limiting the power of the individual director in the Government over the lives of our people and the businesses of our people.

I am just as much interested in this field, and as concerned about the control of racketeering as anyone, but on the other hand I am equally concerned about the power of the individual in the Government over the determination of the acts of our citizens, and giving so much latitude to them. I am wondering if you couldn't be helpful in this?

Mr. CRAMER. Well, I appreciate that there is a problem and I trust the committee will consider the possibility of defining gambling in some way that will not give an open door, blanket authority. I don't think I have any specific suggestions. There are some obvious approaches that have been made, whether the person is involved in the business of gambling, whether this is just a sideline, whether he has one pinball machine in his shop, or what is given out in the way of prizes, and that sort of thing.

If the committee wishes to go into the details in that respect it certainly has authority to do so. May I say that I, too, have voiced myself in opposition to giving blanket authority. I am sure the gentleman remembers last year when this appropriation bill was up for the Justice Department, and it ties in also with this office on syndicated crime, which would set up an investigative staff to correlate this information



to help find out ways of prosecuting this syndicated operation, I complained about the fact that Congress authorized the Attorney General to have 87 assistants, GS-13 and GS-14 assistants, without any descriptive restrictions or proper description of what their functions shall be. The Attorney General testified he wanted to use them to fight organized crime before the subcommittee of the Appropriations Committee, but no one was willing to restrict their usage legislatively to accomplish that.

That is what the office on syndicated crime would do. That would be their function. Their function would be proscribed to accomplish that objective and couldn't be used for any other objective the Attorney General might wish to serve.

This is the first time in the history of America that I know of that an Attorney General has been given a private investigative force outside of the FBI. He has 87 of them, GS-13 and GS-14 people, to investigate any matter that the Attorney General in his discretion wishes them to investigate.

That is the sort of thing the gentleman is talking about that I, too, am concerned about, but Congress wouldn't do anything about it last session and certainly if the committee feels this is going in that same direction I would be the first to suggest language more specifically describing what is meant, for instance, by "gambling."

Mr. YOUNGER. You will recall, if you have read the record, one of the determining factors as to whether this pinball machine is manufactured for gambling purposes or for amusement is the indicator registering the number of free games, and the amusement pinball machine is capable of indicating up to some 99 games.

Mr. CRAMER. 999?

Mr. YOUNGER. No; the gambling is 999, but the pinball machine for amusement can register up to 99, as I recall it, because there are two places for registration, which would go up to 99.

Now, it seems rather ridiculous to say that a machine used for gambling purposes can be determined by that one factor, that if you have over 99 registrations on the indicator it is for gambling, and if you have under 99 it is not for gambling. It is just a question of the amount of gambling which would be paid off, whether it is \$9.90, or whether it is more than that.

It is still gambling whether it is \$9.90 or whether it is \$90, and I am concerned about how we are going to set up some standards. Maybe it is not possible.

Mr. CRAMER. I think the testimony of the other witnesses, some of whom perhaps represent business manufacturers engaged in the production of these machines, can be helpful.

Mr. YOUNGER. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Rhodes?

Mr. RHODES. Mr. Cramer, does your bill in any way differentiate between amusement and gambling machines?

Mr. CRAMER. As the Senate bill does, uses the same language—any other machine or mechanical device \* \* \* designed and manufactured primarily for use in connection with gambling—is the language, which would mean not for amusement, to be distinguished from amusement, gambling as compared to amusement.

Mr. RHODES. What effect would your bill have on an employee of a firm such as a mechanic, one who does repairing on amusement or gambling machines?

Mr. CRAMER. I think it is obvious that the statute intends to cover the persons who are engaged in the business. Someone working for them I don't think would be included, unless he is doing it, of course, on direction of the person who is engaged in the business as his agent, of course.

Mr. DINGELL. Would the gentleman yield? Will you tell us now, please, Mr. Cramer, where there is an exemption in this bill which would exclude employees who are working on a machine? Show us where in that bill there is an exemption of that sort.

Mr. CRAMER. Let me say first that this language that you are referring to now is the same as in existing statutes. It is the language that is presently in existence under the Johnson Act.

Mr. DINGELL. I am aware of that, but where is the exemption of employees?

Mr. CRAMER. And there has been no difficulty in enforcing that, in that it is obvious that the objective and the wording itself is that— it shall be unlawful for any person during any calendar year to engage in the business of manufacturing, repairing, reconditioning \* \* \*

Mr. DINGELL. When a man works for somebody else, and, let's say, in the business of building slot machines, or pinball machines, or automobiles, or washing machines, or whatever it is, he is engaged in the business now, isn't he, of manufacturing automobiles, or pinball machines, or whatever his employer happens to make?

Mr. CRAMER. The prohibition is not against an employee as such shipping in interstate commerce in this section. This section is for registration purposes. The section you are talking about requires registration by the person operating the business. If that business is engaged in repairing, reconditioning, manufacturing, or dealing, it is obvious that the person engaged in the business is going to have to instruct his employees to carry out the registration functions.

Mr. DINGELL. And if they fail to they are equally liable with their employer?

Mr. CRAMER. No, the prohibition is against the unlawful shipment.

Mr. DINGELL. Under here it says—

No person shall be excused from maintaining the records designated herein \* \* \*

That is on page 6, line 6. Then it says:

It shall be unlawful for any person required to register under the provisions of this Act to deliver, ship, or possess any gambling device \* \* \*

That would cover employees, too, would it not? That is line 5, page 5, section (g) (1).

Mr. CRAMER. What bill are you reading from? The Senate bill?

Mr. DINGELL. I am reading from S. 1658, the Senate bill.

Mr. CRAMER. What page is it?

Mr. DINGELL. Page 5, line 5.

Mr. CRAMER. You again refer to the persons required to register. The persons required to register are those people engaged in the business, not the employees.



Mr. DINGELL. Then page 2, line 22, section 3, reads:

It shall be unlawful for any person during any calendar year to engage in the business of manufacturing, repairing, reconditioning, dealing in, or operating any gambling device if in such business he buys or receives any such device knowing that it has been transported in interstate or foreign commerce, or sells, ships, or delivers such device in interstate or foreign commerce, or sells, ships, or delivers such device knowing that it will be introduced into interstate or foreign commerce, unless such person shall, during the month prior to engaging in such business in that year, register with the Attorney General.

This means that any employee has to register with the Attorney General, does it not?

Mr. CRAMER. No. It means the business itself has to be registered and I think any reading of the statute will so interpret it. The person engaged in the business is the one that has to register, the person in charge, the person that owns the business and operates the business. I think it is obvious that the employees would not, and if there is any question about it I think the committee should clarify it in its report. This is substantially the same language as the present law and there has been no problem of registration under that.

The CHAIRMAN. Mr. Rhodes, do you have any further questions?

Mr. RHODES. Yes. On page 2, Mr. Cramer, on line 22, of your bill, it says—

That this section shall not apply to transportation of any gambling device to a place in any State which has enacted a law providing for the exemption \* \* \*

I would like to ask about those States that license machines or operators.

Mr. CRAMER. There isn't any question, I don't think, but what they are intended to be excluded, either under the language of my bill or the Senate bill. If it does not accomplish that I think the committee should perfect the language so that it will.

Mr. RHODES. Thank you.

Mr. CRAMER. It is certainly not an attempt to inject the Federal Government into usurping the prerogatives of the States in determining whether gambling shall be illegal or legal, or horse racing, parimutuel betting, or what have you.

The CHAIRMAN. Mr. Dominick?

Mr. DOMINICK. Thank you, Mr. Chairman. Mr. Cramer, the Attorney General when he gave his statement before the committee and the Senate report, I believe, both said that the Senate bill excludes foreign commerce.

Mr. CRAMER. Yes.

Mr. DOMINICK. I have read this bill and I cannot find where that happens. Can you show it to me?

Mr. CRAMER. The legislative history will have to indicate it, I say to my distinguished colleague. The bill as submitted by the Attorney General, which is the same language as I introduced, H.R. 3024, broadened the prohibition in the present act to include shipment in foreign commerce. Legislatively, the Senate struck out that provision.

Mr. DOMINICK. I don't see that there is anything in this bill which says that foreign commerce is exempt. It still includes, within the prohibitions, foreign commerce as far as I can see.

Mr. CRAMER. No. The present statute does not prohibit shipment in foreign commerce.

Mr. DOMINICK. No, but this bill does.

Mr. CRAMER. No, it does not. If you read on page 2 of the Senate bill you will see the Senate bill does not broaden the present statute. The present statute, as contained in the Senate report, reads:

It shall be unlawful knowingly to transport any gambling device to any place in a State, the District of Columbia, or possession of the United States from any place outside of such State, the District of Columbia, or possession provided \* \* \*.

So the present Johnson Act under section 1172 does not include foreign commerce. Now, the recommendation of the Attorney General was it should include foreign commerce. You will find that recommendation contained in the bill which I introduced, but the Senate struck out that entire section, which leaves the present statute in effect.

There is a question, however, I would like to address to the Chair, or a point I would like to address to the Chair, relating to that. It seems to me that it is not very artful legislative draftsmanship where you are defining interstate commerce in the bill to mean, as contained on page 2 of the Senate bill, line 11:

The term "interstate commerce" includes commerce between one State, possession, or the District of Columbia and another State, possession, or the District of Columbia.

And then repeating that same phrase in the prohibition section. If you are going to do that there is no need for defining interstate commerce. That is why the bill which I introduced made it apply to the prohibition:

It shall be unlawful knowingly to transport any gambling device in interstate commerce \* \* \*.

So that actually there is no need for defining it if in fact you are going to define it in the prohibition itself.

Mr. DOMINICK. I would like to go just a little further on this, if I may. Section 3 of the Senate bill makes it unlawful for any person to engage in the business and so on, to sell, ship, or deliver the device in interstate or foreign commerce, and the words "interstate or foreign commerce" are contained all the way through this.

Mr. CRAMER. Yes.

Mr. DOMINICK. Is it not made illegal in the original Johnson Act or in this act to violate the terms of the statute?

Mr. CRAMER. I say to my distinguished colleague that that was one of the opening remarks I made, that I, too, questioned whether it was the intention of the other body in the prohibition section, which is not changed by the Senate bill, to exclude foreign commerce from the prohibition, and whether then it made any sense to include in the registration section a requirement that a person engaged in the manufacture of devices or improvement and so forth of devices to be shipped in foreign commerce exclusively should have to register. It does not to me.

Mr. DOMINICK. I see your point.

Mr. CRAMER. This is true, however. If these devices are shipped from other countries to this country, and thus foreign commerce is involved, and are transshipped within the United States, that should require registration, so that foreign commerce does have a place in the registration section in that respect. That is if it has transported in interstate or foreign commerce, but then when you



get to "sells, ships, or delivers such device in \* \* \* foreign commerce," that is something else.

So I think the committee ought to consider that obvious inconsistency. If it comes in foreign commerce and it is transshipped that should be prohibited; but if it is manufactured in the United States and then shipped out exclusively, the Attorney General and the Senate agreed that that should not be included in the prohibition, and yet they include it under the registration section.

Mr. DOMINICK. Let me ask you one more question on this: It strikes me that the immediate reaction of anybody with a brain in his head, and these guys have brains or otherwise they would not be getting around the law all the time, is to set up companies in Canada, Japan, South America, Europe, and so on, and ship these machines in by the bucketful where there is no criminal penalty involved, either for the person who receives it or the person who sends it, because they are in foreign commerce.

Mr. CRAMER. That is why I say you definitely would want to include foreign commerce when it is shipped into this country for transshipment.

Mr. DOMINICK. But it is still not made a criminal penalty under the provision that you just cited to me.

Mr. CRAMER. In the transshipment to anywhere else, the shipment into the United States automatically would be prohibited, too.

Mr. DOMINICK. Let me give an example. It is my understanding that if you ship from Managua directly into Colorado without any holding at any point in the United States, that thing comes in in bond or whatever it may be and until such time as it stays at rest in Colorado it is still in foreign commerce.

Now under those circumstances, as I understand your explanation, this would not be subject to any prohibition.

Mr. CRAMER. If it were held in bond that means it was not going to be made use of in the United States and would be transshipped elsewhere.

Mr. DOMINICK. All right.

Mr. CRAMER. But it is prohibited to ship from other countries into this country, into any State in this country under the specific provisions of the present law.

It shall be unlawful knowingly to transport any gambling device to any place in a State, the District of Columbia, or a possession of the United States from any place outside of such State.

"Any place" means Canada or anywhere else.

Mr. DOMINICK. Then what is the purpose of exempting from the prohibition the words "foreign commerce," because foreign commerce comes in as well as going out?

Mr. CRAMER. To prevent a prohibition against the manufacturing of these devices to be shipped to other countries.

Mr. DOMINICK. Then should not the exemption be narrowed in order to specify that when we are talking about the exemption for foreign commerce we are talking only about an exemption of shipment from here to another country?

Mr. CRAMER. I think it is clear in the statute, but if there is any question about it certainly should be clarified, yes, sir.

Mr. DOMINICK. That is all I have, thank you.

The CHAIRMAN. Mr. O'Brien?

Mr. O'BRIEN. Mr. Cramer, don't you think that the registration of foreign commerce manufacture is important and necessary to be sure that the shipments in foreign commerce are identified and can be traced? I can see a loophole there with some of these smart boys.

Mr. CRAMER. Well, it may be that they could ship it to another country and that other country would ship it in, but if it was shipped back to the country it would have to be registered. That is something this committee should consider. It may be that I am overlooking mental gyrations of these people that aren't evident to me.

Mr. O'BRIEN. I don't see any great burden on these people to register even the foreign shipments. Under the Johnson Act are people who operate bingo games required to register with the Federal Government?

Mr. CRAMER. No.

Mr. O'BRIEN. Under the Senate bill would they be?

Mr. CRAMER. It is not intended they should be. If in fact the wheel that they use to pick out the number is defined to be a "mechanical device," which it obviously would be, it naturally would be a mechanical device; but whether it is designed and manufactured primarily for use in connection with gambling is the second requirement and there I think we get into the question suggested by my distinguished colleague as to whether you should define what is meant by gambling to specifically exclude such things as bingo.

Mr. O'BRIEN. Yes, but there wouldn't be any doubt that that little drum would be specifically designed and manufactured for gambling. I cannot think of any other use.

Mr. CRAMER. It is used for nongambling purposes probably as much or more than it is for gambling. You play bingo in the home and otherwise.

Mr. O'BRIEN. I was interested because bingo is legal in New York State and I can just see the situation.

Mr. CRAMER. There is question about that exclusion. That is excluded by virtue of the exclusion of—

betting equipment or materials used or designed for use at race tracks or other licensed gambling establishments where betting is legal under the applicable State laws.

Mr. O'BRIEN. They are not excluded from registering, are they? They have to register, even if they are going into those States, don't they?

Mr. CRAMER. Yes, but there is certainly no intention to include that equipment in this criminal prohibition.

The CHAIRMAN. If it was licensed within the State of New York it would be.

Mr. O'BRIEN. The people operating a bingo game in New York State would not have to keep these records required by this bill if it is legal in New York State; is that right?

The CHAIRMAN. If there is a procedure for licensing them in the State of New York they would not be, but unless they are licensed they would be. If the statute merely makes it legal they would come under it unless they were issued a license.

Mr. O'BRIEN. They are issued a license. Thank you.



Mr. CRAMER. The manner in which the chairman stated, which is correct, is something this committee is going to have to consider to make sure it is clear that that type of bingo operation is not to be included. It certainly was not the intention of the bill I introduced.

The CHAIRMAN. Whether a statute in a State permitting certain operations could be considered actually as licensing an operator to engage in that would be another question.

Mr. CRAMER. That is right.

The CHAIRMAN. Mr. Moss?

Mr. MOSS. No questions, Mr. Chairman.

The CHAIRMAN. Mr. Dingell, any further questions?

Mr. DINGELL. Yes, Mr. Chairman. The thing that concerns me is that our colleague constantly states that courts will have to check legislative history to see what constitutes a "criminal" gambling machine. As I understand the constitutions, both of States and the Federal Government, when an act is made criminal by statute, that statute must be sufficiently explicit and clear to apprise the person charged with the nature of the crime with which he is charged, am I correct? This is a correct principle of constitutional law, isn't it?

Mr. CRAMER. Is it correct that a person charged with a crime must know the crime he has committed, yes. Therefore, that is necessary or he wouldn't have an intention to commit it, yes.

Mr. DINGELL. That is right, and he must know that without referring to legislative history, and the minute he has to refer to legislative history to clarify the statute under which he is charged, then he is charged with a violation of an unconstitutional statute; isn't that correct?

Mr. CRAMER. Correct. We were talking about legislative history from the standpoint of the Attorney General's administration of the act. Certainly the Attorney General, in determining whether to bring a charge against an individual, should consider the legislative history. It is his duty to do so.

Mr. DINGELL. That is exactly what concerns me, because if the statute is so abstruse that the Attorney General of the United States must refer to the legislative history, then obviously it is so abstruse that the ordinary defendant who might be charged would be not able to know with reasonable certainty the nature of the crime with which he is charged. Am I right or wrong?

Mr. CRAMER. I don't think there is any question but what a person would know whether he was shipping in interstate commerce a device or a machine designed and manufactured primarily for use in connection with gambling. That is the definition you are talking about.

Mr. DINGELL. All I want to do is see that this statute is sufficiently explicit. I have just been talking in general terms; but if at any time we were to find that a defendant would have to refer to the legislative history or the Attorney General would have to refer to the legislative history to determine what constituted a criminal violation of this statute, we would have an unconstitutional statute because it would be too vague. Am I correct?

Mr. CRAMER. No, I disagree with you. When it comes to the person committing a crime, yes, he has to know he is committing it. He has to have the intent to do it, but when it comes to the Attorney

General determining, he has to do that every day, determine whether or not an act committed by an individual comes within the prohibition intended by Congress. There is nothing unusual about that.

Mr. DINGELL. Furthermore, as a practical matter over the course of years the Attorney General is not going to refer to the legislative history. He is going to look at the clear language of the statute, is he not, and the courts will look at that.

Mr. CRAMER. What Attorney General are you talking about? The present one?

Mr. DINGELL. Any Attorney General.

Mr. CRAMER. If you mean the present one I agree with you.

Mr. DINGELL. I did not come here to engage in depreciating the ability of the present Attorney General, who, I am satisfied, is a man of more than ordinary competency in his particular position. However, the simple fact of the matter is the courts are not going to look at the legislative history if the language of the statute is clear, are they?

Mr. CRAMER. What is that now?

Mr. DINGELL. If the language of the statute is clear, the courts are not going to go beyond to look at the legislative history.

Mr. CRAMER. We are talking about two different things. I was talking about the Attorney General in determining his function in enforcing the law. You are talking about the individual and his intent to violate it, and I don't think there is any problem involved in the present wording of the statute concerning the intent on the part of the person possibly violating it.

It specifically defines:

Any machine \* \* \* designed and manufactured primarily for use in connection with gambling \* \* \*.

Mr. DINGELL. Thank you, Mr. Chairman. No further questions. The CHAIRMAN. Mr. Rogers?

Mr. ROGERS of Florida. No questions, Mr. Chairman.

Mr. CRAMER. Thank you very much, Mr. Chairman.

The CHAIRMAN. Mr. Hemphill, did you have any questions?

Mr. HEMPHILL. I wanted to ask one question, Mr. Chairman. Thank you. In section 3 of your bill and in section 3 of the Senate bill, I believe it is, you make an exemption, saying that this law shall not apply to any State which has already enacted provisions of law with reference to these devices. Is that correct?

Mr. CRAMER. Yes. I think the Senate language, however, is better. I think it accomplished the objective more clearly.

Mr. HEMPHILL. Would you make that distinction?

Mr. CRAMER. What is that?

Mr. HEMPHILL. Would you continue that distinction?

Mr. CRAMER. Yes, I think the exemption should continue, yes. I don't think that the Federal Government can transgress upon the rights of the States to decide whether, for instance, in Nevada gambling should be legal or whether in Florida, for instance, racetrack betting, parimutuel betting, should be legal. That is a function of the State.

Mr. HEMPHILL. Then if a State wished to pass a statute licensing these gambling devices this law would not be applicable to it?

Mr. CRAMER. That is correct.



Mr. HEMPHILL. Even if it was passed after this law was enacted?

Mr. CRAMER. That is correct.

Mr. HEMPHILL. Thank you.

Mr. CRAMER. Thank you. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Cramer, do you have any feeling one way or the other about including the exclusion of pinball machines operated for amusement purposes only?

Mr. CRAMER. I think it was intended that devices used for amusement purposes only be excluded. It is up to the committee to decide what language would accomplish that, whether it is pinball machines or otherwise. It was intended to include any devices used for gambling purposes. That would obviously by implication exclude those things used for amusement only.

The CHAIRMAN. I have great trouble over what you mentioned a moment ago unless you define what gambling is. With respect to a gambling device that two people may get together over, that is, any object that two people may get together over, it was indicated here the other day if it was a silver dollar which was used for gambling, which is used actually for gambling, that it would be possible to include it if it comes through some kind of a mechanical device.

Mr. CRAMER. It is true that two people if they want to gamble are going to find some type of means of gambling that hardly any law could prohibit; but this is intended to get at those who are in the business of gambling.

The CHAIRMAN. And you feel sure that the legislation makes it very clear one way or the other?

Mr. CRAMER. I do.

The CHAIRMAN. Thank you very much. We appreciate your interest in this legislation and your testimony this morning.

Mr. CRAMER. I appreciate the opportunity.

The CHAIRMAN. Mr. Halpern.

#### STATEMENT OF HON. SEYMOUR HALPERN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. HALPERN. Mr. Chairman, thank you for this welcome opportunity to offer my views to your committee today on behalf of my bill, H.R. 8410.

For many years I have been active in the legislative fight to combat organized crime. During my years in the New York State Senate, I introduced legislation which initiated their State crime commission and was the sponsor of many bills toughening the laws on narcotics and other similarly vicious forms of crime. Another law with which I am identified in my native State is the one which created the bi-State commission that has made great strides in sweeping the New Jersey and New York waterfronts clean of corruption.

In this session of the Congress, I have been privileged to join in the sponsorship of three of the bills advocated by the Justice Department to crack down on organized crime, all of which are now law.

I am sure I need not remind you of the seriousness of the menace of organized criminal activity. The "syndicate" has penetrated to a frightening degree, and while I applaud every move Attorney General Kennedy had made to counter this menace, I also agree with him that

much more needs to be done. Organized crime thrives on the proceeds of the gambling and narcotics rackets. It is a bloated octopus whose tentacles reach around every major city and State, feeding on billions of dollars sucked from the Nation's economy.

A great advance was made with the enactment of the Attorney General's anticrime program during the first half of this Congress, particularly in three bills—S. 1656, covering transmission of bets, wagers, and related information; S. 1657, prohibiting the interstate transportation of wagering paraphernalia; and S. 1653, prohibiting travel or transportation in aid of racketeering enterprises—all of which I was privileged to cosponsor. Now, as the Attorney General has testified before you, H.R. 8410 will greatly complement the program and will make even further strides in cutting off the funds now being used to finance organized crime.

The bill before you today is another in a series of measures designed to deal organized gambling a paralyzing blow by hitting where it hurts most—in the pocketbook.

The Johnson Act, which this bill will broaden, has been proved to be inadequate. The evil geniuses behind the crime syndicates have demonstrated their ingenuity in finding devious ways around the restrictions.

Basically, H.R. 8410 is designed to so clearly define these gambling devices as to cover everything from pinball machines to roulette wheels. The Johnson Act was limited to machines that were coin operated, paid direct "payoffs," or had certain mechanical devices which are common to slot machines. Under the provisions of this bill, all devices which deliver money or property, either directly or indirectly, will be considered gambling devices and therefore illegally transportable across State lines.

The philosophy behind it is, I am sure you will agree, sound. The sponsors of this bill argue that, once profit motives are diminished and/or eliminated, organized gambling will cease to be the destructive force it has become. The gambling czars are not in this business as a hobby.

I wish to point out, Mr. Chairman, that the bill is so worded that devices designed for amusement purposes are not included. There is also exception made for parimutuel machines and other devices manufactured for racetracks and other gambling establishments in areas where gambling is legal under State law.

The provisions of this bill also broaden the registration requirements made of all those who in any way deal with gambling devices. This will give the Attorney General the weapons for which he has asked to track down and eradicate this menace.

Mr. Chairman, we do not seek to legislate against the vacationer who occasionally drops 50 cents in a pinball machine. But, unfortunately, the days of the harmless "one-armed bandits" are gone. Now the callous, vicious men who control organized crime run our gambling devices. I repeat that if we are ever to eradicate this menace, we must remove the profit motive. Thousands, millions of dollars are squandered each year—money that is used to line the pockets of the men who plan a murder as calmly as we might plan a golf date.

The Attorney General has presented a most convincing argument in behalf of this legislation, and I wish to add my urgent request for



your favorable action on H.R. 8410. It is vital if we are to achieve an effective, well-rounded fight against crime in America.

Thank you again, Mr. Chairman and my colleagues on this distinguished committee, for the opportunity to appear before you today.

The CHAIRMAN. Thank you very much, Mr. Halpern, for your testimony on this very important subject.

Mr. Pelly? We are glad to welcome our colleague from Washington to the committee.

#### STATEMENT OF HON. THOMAS M. PELLY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WASHINGTON

Mr. PELLY. Mr. Chairman, it is always a special pleasure for me to appear before this committee on which I had the honor and pleasure of serving at one time.

The CHAIRMAN. In view of the fact that our colleague is not with us any more, let me say we regretted his leaving but we knew the reason for it and we are glad to have you back any time.

Mr. PELLY. In view of the time limitations, Mr. Chairman, if I might be permitted just to insert my full statement I think I can summarize and bring up the particular issue in connection with this legislation which concerns me.

The CHAIRMAN. You may have permission and your statement will be included in the record at this point, and you may proceed.

(The statement of Mr. Pelly follows:)

#### STATEMENT OF HON. THOMAS M. PELLY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WASHINGTON

Mr. Chairman and members of the House Committee on Interstate and Foreign Commerce: It is always, for me, a special pleasure to appear before this great committee on which I once had the pleasure and honor to serve.

I appear today in connection with H.R. 3024, S. 1658, and related bills which would prohibit the transportation of gambling devices in interstate and foreign commerce.

My congressional district includes a large part of Seattle and its suburbs in the State of Washington. In my State there are approximately 2,000 business locations where coin-operated amusement devices are operated as trade and business stimulants. Of this total some 800 are located in the city of Seattle and 200 in King County.

These games are miniature shuffleboard, bowlers, baseball, and a variety of entertainment devices and I am told 80 percent of them are located in small businesses, the survival of which, to a high degree, depends on the supplemented revenue from these machines. I have heard it stated that 10,000 residents of my State, including the families of those employed in these businesses, would suffer if the operation of these games were stopped. I am satisfied that this is no exaggeration.

An assistant to the Attorney General, the Director of Public Relations for the Department of Justice, whose name is Ed Guthman, up until early last year an outstanding Seattle Daily Times writer, at one time made a survey of the pinball industry as it operates in Washington State. He wrote an article which was most flattering to the character of the persons connected with the pinball business, and as I recall this newspaper article gave the industry a clean bill of health as far as organized crime and racketeering is concerned.

I do not rate as an expert witness in this field, but I think I have a responsibility to represent my area and furnish your committee with such information as I have been able to gather regarding the operation of the pinball industry in the State of Washington where these devices are not, as in some States, legalized, but, instead, their operation is permissive and has become a source of important State and local tax revenue.

At this point let me interject emphatically that I am in complete accord with the program of the Attorney General in the crusade to outlaw organized crime and racketeering. I was gratified that the day before yesterday he testified that passage of five of his eight recommendations in this anticrime field during the last session of Congress had an immediate effect in reducing gambling profits. However, I urge your committee to make sure that passage of this legislation does not burn down a barn to destroy a few rodents. In other words, if a State permits pinball machines where they are licensed, taxed, and regulated by local civil authority—although not specifically legalized—it seems unfair to punish the innocent because in some States there are those who are guilty.

I believe the program of the Attorney General can be effective without such all-inclusive legislation such as is being considered. I have read in my local newspapers where Seattle's mayor and city council support continued licensing and regulation of pinball machines.

I know these officials would not have taken such a position unless they had previously ascertained that operation of such amusement devices was legitimate and properly regulated.

Let me emphasize that this proposed legislation as drawn will seriously complicate the tax problems of my State, county, and city. In Washington State a graduated net income tax has twice been declared unconstitutional and in consequence the legislature has built up a tax structure of multiple-nuisance taxes in order to finance the necessary cost of government. One of these is a tax on certain mechanical devices in which the junior taxing districts may share. The State has received over \$10 million in revenue in the last 5 years from its tax on the gross income from the operation of pinball machines alone, and currently receives in excess of \$2 million annually under the provisions of chapter 82.28, Revised Code of Washington.

King County's return from the same source was in excess of \$100,000 last year and the city of Seattle has received, through direct fees and taxes from the licensing of such games, the following sums for the past 5 calendar years:

1957	-----	\$158,370.00
1958	-----	191,995.00
1959	-----	156,920.50
1960	-----	153,490.50
1961	-----	221,643.84

All licensees in our State must have been residents of the licensing unit of government for at least 5 years and must be screened by the appropriate law enforcement agency before doing business. Location owners are not allowed to accept any financial assistance from mechanical device owners or to change from one owner to another without the consent of the licensing unit. No mechanical device may register more than 160 free plays and all gambling and payouts are forbidden.

As we all know, the Federal Government has preempted many tax areas used by the States or adopted legislation sharing in these sources of income. Passage of the legislation before your committee in its present form would erode further from State tax sources and I therefore urge that any bill reported from this committee be amended to provide that it shall be unlawful to transport in interstate commerce any device defined in section 1(a)2(B) into any State in which the use of the transported device is licensed or taxed under the laws of that State or any subdivision thereof.

In conclusion, I want to thank you, Mr. Chairman, for this opportunity to appear here today. I hope that the committee will carefully consider the problem and provide an amendment to avoid a harsh, undue, and unnecessary Federal restriction on States such as Washington where State and local authorities regulate and control themselves.

Mr. PELLY. I might say, Mr. Chairman, at the start that I have discussed this legislation with Assistant Attorney General Jack Miller and others as to its effect on the State of Washington, and I think there is some uncertainty, and my testimony today has to do with a situation such as with the State of Washington where the pinballs are not legal and yet they are permissive, you might say, and are taxed and regulated by the State.



I think that I can clearly indicate that in the State of Washington there is no such thing as racketeering in connection with this industry. Mr. Ed Guthman, who is the Director of Public Relations for Attorney General Robert Kennedy, at one time was one of the outstanding newspaper writers on the Seattle Times. He made a survey of this industry and, as I recall, he gave an analysis that those connected with it were not in any way racketeers. They were people who had been in the State for a long time and I think you could say he gave it a clean bill of health.

In some of the cities and counties in the State of Washington pinballs are regulated, licensed, and are a source of revenue. It is a considerable source of revenue to the State itself and under local option, of course, the pinball machines in some cities are not allowed.

Just to summarize this matter, I think I have a responsibility to represent my area and furnish your committee with such information as I have been able to gather regarding the operation of the pinball industry in the State of Washington where these devices are not, as I said, as in some States, legal, but instead their operation is permissive and it has become a source of important revenue.

I will put in the record in connection with my statement the amount of taxes that is derived as income, and I don't want to overlook the fact that there are many small businesses that have pinball machines where their regular income is not sufficient probably to allow them to continue, but the pinballs provide a supplementary amount of revenue. They are in small businesses.

Let me point out particularly that in our State, the State itself has preempted many tax areas. However, in the case of the pinball tax it is also available for cities and counties. In our city of Seattle, which I have the honor of representing, according to the newspapers our mayor and our city council support continued licensing and regulation of pinball machines, and I know these officials would not have taken that position unless they had previously assured themselves that the operation of such amusement devices was legitimate and properly regulated.

I think it is important to indicate that the State itself has set forth the conditions under which licenses can be issued, and in this connection, while I am not an expert in these things, I think it is important to point out that all licensees in our State must have been residents of the licensing unit of government for at least 5 years and must be screened by the appropriate law-enforcement agency before doing business.

Location owners are not allowed to accept any financial assistance from mechanical device owners, or to change from one owner to another without the consent of the licensing unit.

No mechanical device may register more than 160 free plays and all gambling and payouts are forbidden.

I think I can conclude, in view of the time, by asking consideration by the committee in connection with this legislation of clarifying whether or not our State would be affected by this legislation. Those that I have talked to in the Department of Justice are unable to tell me. However, in any event, I would hope that the legislation would not affect an area such as our State, and if that is the case may I suggest maybe that an amendment be put in to clarify this position and

to state that it shall not be unlawful to transport in interstate commerce any device defined in section 1(a)2(B) into any State in which the use of the transported device is licensed or taxed under the laws of that State.

With that I will just thank again the committee for scheduling me to appear here this morning and say that as far as I am concerned I think my statement will be very much more clear as to the condition that I would hope to protect.

The CHAIRMAN. Mr. Friedel?

Mr. FRIEDEL. No questions.

The CHAIRMAN. Mr. Schenck?

Mr. SCHENCK. No.

The CHAIRMAN. Mr. Rhodes?

Mr. RHODES. No questions.

The CHAIRMAN. Mr. Younger?

Mr. YOUNGER. Yes, I have one. I am always glad to welcome our former colleague and former member of the committee. You say that no mechanical device in the State of Washington may register more than 160 free plays?

Mr. PELLY. That is the State regulation.

Mr. YOUNGER. Do you mean to say that a man can build up to 160 free plays and he still continues to play, or do they give him a credit and he comes back the next day and plays? How is that worked out?

Mr. PELLY. I am glad I said I wasn't an expert in this field at the start, because frankly I have never played a pinball machine in my life, but I was just citing what the State requirement and regulation covers, and frankly I don't know.

Mr. YOUNGER. From the testimony of the Attorney General it would seem to me very clearly that the machine that would register 160 free plays would come under the purview of this act because one of the determining factors was if it registered more than 99 plays.

Mr. PELLY. I read that part of my statement to the Assistant Attorney General over there and they seemed to think that probably the law was not intended to cover situations such as that, but I never got into the practicalities as to how many plays because I frankly don't know.

Mr. YOUNGER. Do you know whether the pinball machines that are used in the State of Washington are of the type that were illustrated here that have a register and registers the number of free games on it?

Mr. PELLY. I think there will be a witness later in these hearings who can state that.

Mr. SCHENCK. Mr. Chairman, if the gentleman will yield for just one question, it seemed to me that our colleague indicated that these machines in the State of Washington do not pay out any money or give any credit. Did you not say that in your testimony?

Mr. PELLY. I believe that that is the State requirement under which the machines may be licensed.

Mr. SCHENCK. If that is true then it probably would come under the pleasure-type machine and not the gambling-type machine, if it pays out no money or no credit.



Mr. PELLY. I thought that distinction might have to do with whether they were legal or not in a State, and I believe under our blue laws that go back to about 1909 that all you can legally do on a Sunday, for example, is operate a livery stable and certain apothecary shops can be open.

I don't think that it is legal to run a ferryboat on Sunday. The fact that in the State probably these pinball machines are not legal might mean that under this bill, if it was passed out the way it is presently written, it might definitely interfere with the operation in the State of Washington of these pinball machines.

Mr. MOSS. Would the gentleman yield?

Mr. YOUNGER. I will yield the floor. I just have one other comment. It seems to me as though when you have an industry where there is apparently no small tax in the case of King County, which jumped from some \$153,000 in 1960 to \$221,000 the following year, that there must be more to it than just amusement.

Mr. PELLY. It amounts to about \$2 million to the State and I agree with you that I think that the rate of taxation is very high on the volume of the actual money that goes into the machine. In the case you cited the rate of tax was increased.

Mr. YOUNGER. You wouldn't recommend, however, or do you recommend, that one of the criteria here as to whether this machine is manufactured for gambling is the amount of taxes that might be collected from it?

Mr. PELLY. No, but I think it is a device of extracting taxes from the people.

Mr. YOUNGER. That is all, Mr. Chairman.

The CHAIRMAN. Mr. O'Brien?

Mr. O'BRIEN. Just one question. Are you suggesting that any device becomes legal in a community if that community, no matter how small, taxes it?

Mr. PELLY. No, I certainly am not. I probably failed to make my point, and that would be that I have asked clarification in a State where these devices are not legal, but are permissive so that the law not interfere with it because, as I understand it, in some States the pinball machines are legal and are acceptable.

Mr. O'BRIEN. Yes, but I am thinking of a situation where a small community near a large city might put a \$5 tax, not on the pinball machine you and I are talking about, but on one of these real \$50 an hour electronic monstrosities and just flood the whole area. I mean just set up a gambling center there. That is why I am worried about this "any subdivision thereof," because we know from experience that there have been some small communities in this country which became gambling centers through various devices and the most simple one would be a \$5 or a dollar-a-year tax on a real gambling device and calling it a pinball machine.

Mr. PELLY. I think the gentleman has a point and I would only hope that in its wisdom the committee would see that such situations would be eliminated.

Mr. MOSS. Would the gentleman yield?

Mr. O'BRIEN. Yes, surely.

Mr. Moss. Mr. Pelly, I cannot understand your concern because, as I read the language proposed, it says:

Any other machine or mechanical device \* \* \* which when operated may deliver, as the result of the application of an element of chance, any money or property, or (B) by the operation of which a person may become entitled to receive, as the result of the application of an element of chance, any money or property \* \* \*.

You say that your law provides that no mechanical device may register more than 160 free plays and all gambling and payouts are forbidden, so that if the gambling and payouts are forbidden—

Mr. PELLY. I would hate to see our industry have to go to the Supreme Court to decide whether your interpretation was right. I hope it will be cleared up now and in the record.

Mr. Moss. We may have a number of parts of this that might have to go to the Supreme Court to determine its legality.

Mr. PELLY. I don't want our industry or our State to have to do that.

Mr. Moss. If your State is only licensing nongambling devices and prohibits payouts or the granting of anything of that kind, then it seems to me that they are excluded up here.

Mr. PELLY. I hope so and I hope the committee will make it certain. That is why I am here. I am a strong supporter of the objective of the Attorney General, but I feel our State is competent to regulate itself as was done with slot machines.

Mr. Moss. I think this goes to the good fight in the enforcement of your own laws. If that is all you intend to license, then we should not be concerned with those which might go beyond this practice and be caught in the provisions of the language of the definition here.

Mr. PELLY. I have only had informal talks with the Attorney General's Office and only have horseback opinions, but I hope before this hearing is through to get something more definite in the way of decision as to whether we would or would not be affected.

Mr. Moss. That is all.

The CHAIRMAN. Mr. Moss, do you have some other questions?

Mr. Moss. No.

The CHAIRMAN. Mr. Dingell?

Mr. DINGELL. Mr. Chairman, I just want to welcome my old friend and colleague to this committee. I had the privilege of serving with him on another committee. He is a very able, distinguished, and conscientious Member of the House.

It is a pleasure to have him with us.

Mr. PELLY. Thank you. I am satisfied that the gentleman who just spoke will recognize the basis of my interest here—State versus Federal control—and see that the State of Washington is well protected by the final legislation that comes out of the committee.

Mr. DINGELL. I shall do my best.

Mr. PELLY. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Keith? I am sorry.

Mr. KEITH. I just want to express my agreement with Mr. Dingell. This is a rare opportunity, that I have, to agree with him. Thank you, Mr. Chairman.

Mr. DINGELL. I think the gentleman has not exercised that particular prerogative very often.



The CHAIRMAN. Thank you very much, Mr. Pelly. We appreciate your interest and testimony this morning. Any Member of Congress interested in this subject who desires may include a statement in the record at this point.

(The statement of Hon. Ralph J. Rivers, Representative in Congress from the State of Alaska, follows:)

HOUSE OF REPRESENTATIVES,  
Washington, D.C., February 2, 1962.

HON. OREN HARRIS,  
Chairman, Interstate and Foreign Commerce Committee,  
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Reference is made to S. 1658 which, having passed the Senate, is now in the hands of your committee. Designed to prevent the transportation of mechanical devices or essential parts thereof in interstate commerce, as a blow at big gambling syndicates, this bill would apparently terminate the use of coin operated nonpayoff pinball machines which are taxed in Alaska and permitted for amusement. Thus S. 1658 in its present form would terminate the income derived by the State from the tax mentioned, which, for the specific type of device above mentioned, including bingo type and horserace machines, brought into the State coffers for the year 1961 the sum of \$65,071.40. The State also taxes other coin operated machines if brought into use but no waiver of prosecution for violation of the antigambling law is involved. The limited amount of State revenue derived from this source in 1961 is in addition to the \$65,071.40 above mentioned.

Since, to the best of my knowledge, no syndicate or racketeering involving coin operated pinball machines or other nonpayoff amusement machines has reached Alaska, and my State would like to continue handling the matter as at present, I wish to express my support of an amendment heretofore submitted to the committee which would exempt from the operation of S. 1658 the shipment of pinball machines and like amusement devices into any State which taxes or permits the use of same. In my opinion the bill, even as so amended, would serve the Attorney General's purpose in his drive against crime.

On the understanding that this matter is now ready for committee action in executive session, I respectfully request that this letter be included in the file and read to the committee for consideration by the members in the course of their deliberations on S. 1658.

Thanking you, and with kindest regards, I am,

Sincerely yours,

RALPH J. RIVERS, *Member of Congress.*

The CHAIRMAN. The committee will adjourn until 2 o'clock.

(Whereupon, at 12:05 p.m., Thursday, January 18, 1962, the hearing adjourned, to reconvene at 2 p.m. the same day.)

#### AFTERNOON SESSION

The CHAIRMAN. The committee will come to order.

When these hearings were scheduled there had not been an announcement made as to the memorial service for our beloved Speaker, Mr. Sam Rayburn. Mr. Rayburn was chairman of this committee in the 1930's for a good many years. There was an announcement made by the present Speaker, Mr. McCormack, several days ago that a day would be set aside for that purpose. This afternoon has been set aside for that purpose. And the service is conducted in the Chambers of the House.

So the Chair feels, after consulting with the members of the committee, that it would be most appropriate to defer any further hearings of this committee until tomorrow morning at 10 o'clock.

I regret it if this is going to inconvenience anyone, but, nevertheless, I know it will be understood, and I am sure everyone will be agreeable that, out of respect for our beloved departed Speaker, it would be the most appropriate thing for this committee to do.

And, in the meantime, it would be my purpose to have a meeting of this committee to prepare an appropriate resolution in the memorial to our late Speaker and former chairman of this committee, Mr. Sam Rayburn.

The committee will adjourn until 10 o'clock in the morning.

(Whereupon, at 2:20 p.m., the committee recessed, to reconvene at 10 a.m., Friday, January 19, 1962.)



## GAMBLING DEVICES

FRIDAY, JANUARY 19, 1962

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
Washington, D.C.

The committee met at 10 a.m., pursuant to recess, in room 1334, New House Office Building, Hon. Oren Harris (chairman of the committee) presiding.

The CHAIRMAN. The committee will come to order.

I have a letter from the office of our colleague, Dr. Fernós-Isern, of Puerto Rico, with reference to his statement on the pending legislation, which will be included in the record.

(The letter referred to above follows herewith:)

HOUSE OF REPRESENTATIVES,  
Washington, D.C., January 18, 1962.

HON. OREN HARRIS,  
Chairman, Interstate Foreign Commerce Committee,  
House of Representatives,  
Washington, D.C.

DEAR MR. HARRIS: In the absence of Dr. Fernós-Isern, who is in Puerto Rico, I take the liberty of writing you with reference to legislation pending before your Committee on Interstate and Foreign Commerce which would prohibit the transportation of gambling devices in interstate and foreign commerce. It is understood that hearings are being conducted at the present time.

Some of these bills contain such terminology as "Territories," "territories," and "possessions."

In his letter of June 13, 1961, addressed to you, Dr. Fernós-Isern pointed out why such terms were objectionable. In this letter he also included suggested language for a commerce clause which would overcome these objections. I am enclosing a copy of that letter for your convenience. I am also enclosing copy of a letter directed specifically to H.R. 3024, under date of April 19, 1961, which Dr. Fernós-Isern addressed to Congressman William C. Cramer, author of H.R. 3024.

I know that Dr. Fernós-Isern would be very much indebted to you if you would see fit to call these observations to the attention of your committee in the course of consideration of legislation prohibiting the transportation of gambling devices in interstate and foreign commerce.

Sincerely yours,

ORVILLE WATKINS,  
Administrative Assistant.

P.S.—I am also enclosing a copy of your letter of July 26, 1961, in reply to Dr. Fernós' letter of June 13, 1961.

JUNE 13, 1961.

HON. OREN HARRIS,  
Chairman, House Interstate and Foreign Commerce Committee,  
Washington, D.C.

DEAR CHAIRMAN HARRIS: In the course of reviewing pending legislation I have come across several bills pending before your Committee on Interstate and Foreign Commerce in which it was not clear to me whether the authors intended for these bills to apply to the Commonwealth of Puerto Rico. These bills are: H.R. 1117, H.R. 1235, H.R. 1141, H.R. 1949, H.R. 1213, H.R. 1214, H.R. 2297, H.R.

3024, H.R. 3967, H.R. 646, and H.R. 116. The difficulty arises from the use of language specifying application of the "Territories," "territories," "Territories and possessions," and "territories and possessions," of the United States, usually in addition to the application of such bills to States and the District of Columbia. I have suggested to the authors of some of these bills that if it was their intention to include the Commonwealth of Puerto Rico, the Commonwealth of Puerto Rico be included by specific mention, for "Territories" generally means incorporated territories, such as were Alaska and Hawaii, and although the term "possessions" might properly be used to include Guam and the Virgin Islands in legislation, perhaps the term should be avoided for semantic reasons.

In addition, some of this legislation makes application within such offshore areas. However, the Commonwealth of Puerto Rico has its own constitution; Guam and the Virgin Islands have local legislatures which have been given responsibilities for legislating internally within the terms of organic acts approved for them by the Congress, and Samoa has a constitution which governs internal matters.

To overcome the objections which I have described above, and for the sake of clarity and brevity, I should think that it would be preferable to include, in most cases, by definition of the term "State," "the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and the District of Columbia." In those bills where jurisdiction is taken to regulate commerce, it could then be defined as follows: "The term 'commerce' means commerce between any State and any point outside thereof, between points within the same State but through any point outside thereof, and commerce within the District of Columbia."

In the hope that you may agree with my views on this subject, I take the liberty to suggest that you may wish to instruct the counsels on your committee staff to look for such generalized language in these and other bills referred to your committee, so as to make the recommended changes.

I may say that I have given this matter a great deal of thought and study, and have decided to bring this matter to your attention in a spirit of helpfulness. Should you have any questions or should you wish to discuss this matter further, I should be most happy to do so.

Sincerely yours,

A. FERNÓS-ISERN,  
Resident Commissioner.

APRIL 19, 1961.

HON. WILLIAM C. CRAMER,  
House of Representatives, Washington, D.C.

DEAR COLLEAGUE: Your bill, H.R. 3024, to amend the act of January 2, 1951, prohibiting the transportation of gambling devices in interstate and foreign commerce, has come to my attention.

I find that in the enumeration on section 22, the Commonwealth of Puerto Rico is not included. If it is the intention to include the Commonwealth of Puerto Rico it would have to be mentioned by name.

I have given a great deal of thought to the language being used in the various commerce clauses in legislation before the Congress, and I have arrived at the following: "The term 'State' includes the several States, the Commonwealth of Puerto Rico, the District of Columbia, the Virgin Islands, and Guam." "The term 'commerce' means commerce between any State and any point outside thereof, between points within the same State but through any point outside thereof, and commerce within the District of Columbia."

This, I think, is both concise and clear and avoids the use of the term "possession," which is undesirable for obvious reasons. This suggested language has the approval of the Department of the Interior and I understand that they are communicating with both the Committee on Commerce of the Senate and the Interstate and Foreign Commerce Committee of the House to suggest this language be used.

You will note that jurisdiction is not taken over commerce within the Virgin Islands or Guam, since both of these areas have their own legislatures operating within the scope of authority granted in organic acts extended to them by the Congress. On the other hand, to regulate commerce wholly within the Commonwealth of Puerto Rico would be in conflict with section 9 of the Puerto Rican Federal Relations Act which states that Federal laws are applied in Puerto Rico as in the United States.



It is suggested that Samoa be excluded from the definition because of the communal nature of their society which is not usually adaptable to Federal legislation of this type. However, if desired, it could be added.

I offer these suggestions in a helpful spirit and I hope that you may see fit to give them consideration.

Sincerely yours,

A. FERNÓS-ISERN,  
*Resident Commissioner.*

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
*Washington, D.C., July 26, 1961.*

HON. A. FERNÓS-ISERN,  
*Resident Commissioner, Commonwealth of Puerto Rico, House of Representatives, Washington, D.C.*

DEAR COLLEAGUE: I have your letter of June 13, 1961, with regard to the problems which arise in determining whether bills intend to include the Commonwealth of Puerto Rico.

I have discussed this matter with the staff and have brought your letter to the staff's attention. It is my understanding that your proposal with regard to legislative language is very desirable and this committee will certainly make an effort to give careful consideration to the question which you have raised in connection with any legislation coming before this committee.

It is my hope, however, that you and your staff will have an opportunity to check on the bills reported by our committee in order to make sure that the situation with regard to the Commonwealth of Puerto Rico is covered in a satisfactory manner.

With kind regards.

Sincerely yours,

OREN HARRIS, *Chairman.*

The CHAIRMAN. Our first witness this morning will be Mr. Martin M. Nelson, of Murtaugh & Nelson, 111 West Jackson Boulevard, Chicago, who is accompanied by the Honorable Bailey Walsh, Washington counsel of the Bally Manufacturing Co. Is that correct?

Mr. NELSON. Yes, sir.

STATEMENT OF MARTIN M. NELSON, COUNSEL; ACCOMPANIED BY BAILEY WALSH, WASHINGTON COUNSEL, AND WILLIAM O'DONNELL, GENERAL SALES MANAGER, BALLY MANUFACTURING CO., CHICAGO, ILL.

The CHAIRMAN. Mr. Nelson, we are glad to have you, and Mr. Walsh, too.

Mr. NELSON. Thank you, sir. I am deeply appreciative of the opportunity to appear here. I appear on behalf of the Bally Manufacturing Co., and inasmuch as H.R. 3024 and H.R. 8410 are virtually identical in all respects to S. 1658, I am limiting this presentation to S. 1658 with the request that it apply to all three of the above-mentioned bills.

The CHAIRMAN. Yes, they are all considered together, so it is all right.

Mr. NELSON. Thank you. In the interest of conserving time, knowing that there are a good many other witnesses to appear, I will summarize my statement as briefly as possible.

The CHAIRMAN. I understand that you have a prepared statement. Do you wish to have it included in toto in the record and then summarize it as you have indicated?

Mr. NELSON. I would greatly appreciate it.

The CHAIRMAN. Your statement, then, will appear at this point in the record and you may proceed to summarize it as you wish.  
(The statement referred to above follows herewith:)

STATEMENT OF MARTIN M. NELSON, ATTORNEY, MADE ON BEHALF OF BALLY MANUFACTURING CO. OF CHICAGO, ILL.; ACCOMPANIED BY BAILEY WALSH, WASHINGTON COUNSEL FOR SAID COMPANY

My name is Martin M. Nelson. I appear here on behalf of Bally Manufacturing Co., 2640 West Belmont Avenue, Chicago, Ill. Attorney Bailey Walsh, Washington counsel for such company, has collaborated in the preparation of and joins me in this presentation. Inasmuch as H.R. 3024 and H.R. 8410 are virtually identical in all respects to S. 1658, I am limiting this presentation to S. 1658 with the request that it apply to all three of the above-mentioned bills.

My client manufactures coin-operated pinball and other amusement devices, and sells these devices to distributors who, in turn, sell them to operators. The games are then placed on premises of small shopkeepers, taverns, and places of amusement. The proceeds of operation are divided between the proprietor of the establishment and the operator.

By S. 1658, which was introduced April 18, 1961, and referred to the Senate Committee on the Judiciary and reported favorably with amendments under date of July 27, 1961, in Report No. 645 and subsequently passed in the Senate under date of July 28, 1961, it is proposed to amend the definition of "gambling device" in "An act to prohibit transportation of gambling devices in interstate and foreign commerce," approved January 2, 1951 (64 Stat. 1134; 15 U.S.C. 1171). The proposed new definition of "gambling device," as set forth in S. 1658, is as follows:

That section 1(a) (2) of the act of January 2, 1951 (64 Stat. 1134; 15 U.S.C. 1171) (Public Law 906), is amended to read as follows:

"(2) any other machine or mechanical device (including, but not limited to, roulette wheels and similar devices) designed and manufactured primarily for use in connection with gambling and (A) which when operated may deliver, as the result of the application of an element of chance, any money or property, or (B) by the operation of which a person may become entitled to receive, as the result of the application of an element of chance, any money or property, provided that the provisions of this subsection shall not apply to parimutuel or other betting equipment or materials used or designed for use at racetracks or other licensed gambling establishments where betting is legal under applicable State law."

Public Law 906 was born of the investigations of the Senate Crime Investigating Committee (sometimes known as the Kefauver committee) which concluded that national criminal syndicates trafficked in slot machines and that slot machines were a source of income to these illicit operations, and so Public Law 906 was designed to prohibit the shipment in interstate commerce of slot machines and similar devices, and nothing more. I believe it may reasonably be said that Public Law 906 has attained its objective; that there is nothing in the annals of the Congress or its committees that I have been able to find, since January 2, 1951, that justifies the extension of Public Law 906 to purely amusement games.

The proposed amendment, however, does extend the provisions of Public Law 906 to a variety of coin-operated amusement games, such as pinball games, shuffleboard games, bowling games, target games, and many other similar devices all designed for amusement.

The Attorney General in his statement to the Senate Committee on the Judiciary on June 6, 1961, supporting the proposed amendment, declares in reference to pinball games that "these machines also would be banned from interstate commerce by the provisions of this bill."

Because no pinball games are manufactured to operate in such a way as to entitle a person to receive money, we must assume that the Attorney General's declaration in respect to pinball games is based on the fact that the attainment of certain high scores on a pinball game may entitle a person to receive free plays, which in some jurisdictions are considered a thing of value or property, but which in other jurisdictions are legally considered what they are actually are, the mere innocent right to play the game without charge.

We cannot believe that the Attorney General's intention is that the mere existence of "an element of chance" is or should be sufficient to classify an



amusement game as a gambling device. If this were the criterion, then the paraphernalia of almost every game or sport would be classified as gambling equipment, because, regardless of the degree of skill demanded, an element of chance is present in almost every game and sport.

One other line of reasoning may be assumed as the basis of the Attorney General's assertion that pinball games would be barred from interstate and foreign commerce by S. 1658. Such reasoning would assume that free plays are not played but are redeemed for money. We do not pretend that free plays are never converted to cash, but we argue that not only free play pinball games, but almost any article of commerce can be put to a wrongful use, but should not for that reason alone be barred from the facilities of interstate commerce. Because some storekeepers give pinball players the cash equivalent of free plays hardly seems to justify bringing down on the heads of all manufacturers, owners, and operators of pinball games the vast apparatus of Federal law enforcement by declaring pinball games, designed and built for amusement only, to be contraband to interstate commerce.

I have mentioned the fact that free plays are considered property in some jurisdictions and, therefore, illegal in such jurisdictions. This, of course, is not proof that free plays are a national evil. Indeed the variety of local attitudes toward free plays, prohibitory in one jurisdiction, permissive in another jurisdiction, is—like the variety of local attitudes toward the method of selling alcoholic beverages—part of the American tradition of close-to-home control of manners and morals and, I respectfully submit, should give the Congress pause before passage of laws to impose a Federal pattern on all the multitudinous communities of the States.

The Congress is now being asked by the proposed passage of S. 1658 to impose such a uniform pattern of conduct and to prevent the transportation of devices which are legal in many jurisdictions. There are numerous court decisions that hold free play games to be perfectly legal. Among such cases are the following:

- Davies v. Mills Novelty Co.*, 70 F. 2d 424 (C.C.A. 8th 1934)  
*In re Wigton*, 30 A. 2d 352 (Pa. Super. 1943)  
*Washington Coin Machine Assn. v. Callahan*, 142 D. 97 (C.A., D.C., 1944)  
*Overby v. Oklahoma City*, 287 F. 796 (Okla. Crim. 1930)  
*Mills Novelty Co. v. Farrell*, 64 F. 2d 476 (C.C.A. 2d 1933, affirmed 3 F. Supp. 555)  
*Commonwealth v. Kling*, 13 A. 2d 104 (Pa. Super. 1940)  
*Gayer v. Whelan*, 138 P. 2d 763 (Cal. Dist. Ct. of App. 1943)  
*States v. Betti*, 42 A. 2d 640 (N.J. Ct. of Quarter Sessions 1945)  
*Chicago Patent Corporation v. Genco, Inc.*, 124 F. 2d 725 (C.C.A. 7th 1941)  
*State v. Waite*, 156 Kans. 143, 131 P. 2d 708 (1942)  
*State v. One Bally Coney Island*, 258 P. 2d 225 (1953)  
*State v. One Jack & Jill Pinball Machine*, 224 S.W. 2d 854 (Mo. App. 1949)  
*Crystal Amusement Corporation v. Northrop*, 19 Conn. Supp. 498, 118 A. 2d 467 (1955)  
*McNeice v. City of Minneapolis*, 84 N.W. 2d 232 (1957)  
*Stevenson v. Salt Lake City*, 7 Utah 2d 28, 317 P. 2d 597 (1957)  
*Sharpenstein v. Hughes*, 162 ACA 406 (California 4th District State Ct. of Appeals) Cert. denied by Calif. State Supreme Ct. on Sept. 24 (1958)  
*Pco. v. One Mechanical Device*, 142 N.E. 2d 98, 11 Ill., 2d 151 (1957)  
*Masters v. Kansas City, Mo.*, 294 S.W. 2d 366, (1956)  
*State v. Gulgus*, 347 P. 2d 592 (Supreme Ct. of Oregon) (1959)  
*McKeel v. Foster*, 347 P. 2d 585 (Supreme Ct. of Oregon) (1959)

In 29 States and also in the District of Columbia, free play pinball games are either specifically authorized by statute or court decisions or they have not been specifically prohibited and are widely used in such States.

I have discussed pinball games at length, because the Attorney General specifically mentioned pinball games. However, all that I have said about pinball games relates with equal force to most of the other amusement games previously enumerated. Most such games entitle the successful player to receive free plays. And even those games which do not, such as bowling games, could fall under the ban of S. 1658 if some tavernkeeper should award a prize—a carton of cigarettes or the like—for high score of the week.

The Attorney General relies on the decision in *U.S. v. Korpan* (354 U.S. 271), for his assertion that a pinball machine is a gambling device for purposes of the excise tax imposed by the Internal Revenue Code (26 U.S.C. 4461 and 4462), and by recent IRS interpretive rulings pertaining thereto. The *Korpan* decision only considered a factual situation wherein free plays were redeemed for cash

and in no way could be construed to classify all pinball games as gambling devices for purposes of the taxing statute then before the court. The recent IRS rulings are presently being contested in the Federal courts.

The Attorney General contends that passage of S. 1658 is necessary to control activity of hoodlums and racketeers. But there is no evidence that pinball games are generally operated by hoodlums. That racketeers have invaded the coin-operated game business, as they have invaded many other types of businesses is not denied. But should an entire industry, consisting chiefly of small businessmen, respected in their communities, be outlawed for the wrongs of a few—particularly when such wrongs may readily be dealt with by established law enforcement agencies? The final report of the Select Committee on Improper Activities in the Labor Management Field clearly states in reference to the coin machine industry that "the honest legitimate people who are *in the great majority in the industry* have been widely victimized by racketeers and thugs." We endorse the Attorney General's purpose to stop the activity of racketeers and thugs. We do not agree that the best way to do this is to put their victims out of business by barring amusement games from interstate commerce.

To my knowledge no evidence has been introduced to this committee which would indicate that there is sufficiently widespread organized misuse of pinball machines as gambling devices to justify their inclusion under Public Law 906. At the time when Congress was considering passage of Public Law 906 an effort was made to include pinball machines within the coverage of the law, however, in House Report No. 2769 which accompanied Public Law 906 a clear intention to exclude pinball and similar games was expressed by the committee on page 7. The following language was used:

"In view of this testimony and because of its intention to *exclude* pinball machines and similar amusement machines, as well as certain machines and devices commonly used, for instance, at carnivals and livestock shows, your committee decided to adopt a definition of gambling devices different from the one contained in the Senate bill." [Emphasis supplied.]

It is urged that the amended definition contained in S. 1658, if adopted, will present even a more serious problem than the existing definition contained in Public Law 906. The proposed definition is utterly generic, indefinite and of a "shotgun" character.

It is clear that considerable confusion exists as to just which is intended to be included by the new definition. Section (B), which is most objectionable, reads as follows:

"(B) \* \* \* by the operation of which a person *may become entitled to receive*, as the result of the application of an element of chance, any money or property." [Emphasis supplied.]

It is patently unrealistic and unreasonable, if not impossible, to determine whether a particular device might possibly be operated so that a person may become entitled to receive, as the result of the application of an element of chance, any money or property. Some element of chance is present in most every game or sport.

At the recent hearings held before the Senate Judiciary Committee on this proposed bill some effort was made to emphasize the words "designed and manufactured primarily for use in connection with gambling," which words were apparently supposed to create an exemption for pinball games and other amusement devices.

As a lawyer, I must take exception to the use in a criminal statute of such broad, flexible language, the meaning of which would be subject to as many interpretations as there are various amusement games. From the viewpoint of the Attorney General, a policy decision by him as to what machines should be included in such language would, of course, be an effective guide for the various U.S. attorneys who would enforce the law throughout the country. From the viewpoint of the manufacturer or purchaser of games who would be directly affected by the sanctions of the act, little solace could be taken from an expressed intention not to apply the law to amusement games. The manufacturer or purchaser of a game should not be expected to assume the risk of a criminal prosecution on the basis of such a vague meaningless standard, in order to vindicate the position that a particular game is not a gambling device.

To what law do we go to determine if a game is an amusement game? As mentioned above, some States have determined that free play games are gambling devices; the majority of States have not so held, and many States by licensing these games gather much needed revenue.



If this bill as now written is passed, it could prevent the shipment into a given State of a game that is strictly an amusement game under such State's law. Under the laws of nearly all States, gambling devices are prohibited. A gambling device is any device, whether it be a slot machine or any other device by whatever name it is known, that has no potential for a lawful use. Some States have differed on whether a free play is a "prize" or simply amusement. In those States which determine that a free play is a "prize," any machine awarding a free play, no matter how many or how often, would be a gambling device.

It could conceivably occur that if the bill is passed as written and the Attorney General decides that only those pinball games that cannot award more than 20 free games are not gambling devices, shipments of these games could be made into States that hold such games to be gambling devices, whereas shipments of games which allow the award of an unlimited number of free plays into States that hold such games to be legal, could be prevented. There is an inference that if this bill is passed, a determination as to gambling characteristics possessed by a game, will be made based on the number of free plays that could be awarded. (See pp. 304 and 305 of the hearings before the Committee on the Judiciary of the U.S. Senate wherein Assistant Attorney General Herbert Miller made such a distinction.) This distinction fails to consider that: (1) a free play is either purely amusement or a prize—if the latter, then a machine awarding a free play is a gambling device; if the former, its character does not change by virtue of the fact that more amusement can be won on a particular machine than on another; (2) no matter how many free games can be awarded by any given machine, they are not always awarded to every player and the maximum amounts obtainable are probably never awarded—players of pinball machines like something to shoot for—the higher the maximum, the better; (3) whether a machine awards one possible free play or 1,000, if redemptions of free plays for money are made, then gambling exists, even though free plays are themselves considered to be amusement under the particular State's law.

As originally introduced, S. 1658 provided in section 2, above quoted, an exemption for parimutuel betting equipment designed for use at racetracks where betting is legal under applicable State laws. This provision was further extended by Senate action to also include any other betting equipment for use at racetracks or other licensed gambling establishments where betting is legal under applicable State laws.

It is indeed an unusual situation that a bill, which has as its purpose the prohibition of the transportation of gambling devices, permits the transportation of such gambling equipment to States for use at racetracks or other licensed gambling establishments where betting is legal under applicable State laws, but yet would prohibit the transportation of amusement equipment into a State where it is perfectly legal, merely because the Attorney General might decide that, in his opinion, such equipment is "designed or manufactured primarily for use in connection with gambling," irrespective of the determination by the State that the equipment is legal.

The problem of the possible conflict that might exist was recognized by the Attorney General's Office in Senate Report No. 645 relating to this bill, on page 5, wherein appears a letter from Deputy Attorney General Byron R. White addressed to the chairman of the Senate Committee. The letter stated that the proposed bill only covered pinball machines which are "designed and manufactured for use in connection with gambling" (an extremely nebulous standard as pointed out above), but it had been suggested that specific language be included in the bill permitting pinball machines to be imported into States where such machines are lawful.

Mr. White suggested the following language to embody such concept:

"Amend section 3 of S. 1658 by adding the following proviso at the end of the first proviso:

"*Provided further*, That it shall not be unlawful to transport in interstate commerce any device commonly known as a pinball machine into any State in which the transported device is specifically enumerated as lawful in a statute of that State."

I do not believe that Mr. White's suggestion would be at all adequate because in many States these games are lawful not by "specific enumeration" as to their legality, but by licensing provisions, court decisions, and the absence of any statute specifically prohibiting them. It appears to me that the focus is misdirected in that the Attorney General presumes illegality when the presumption

should rather be to the legality of the game until prohibited by State action, either by statute or court decision.

In any event this suggested amendment was not adopted by the Senate. It may well be that since it was to be an amendment to section 3 of the proposed bill, and since section 3 of the bill was stricken by the Senate so as to provide an exemption for the transportation of gambling devices in foreign commerce, that the suggested amendment was, as a result, also omitted.

It appears on pages 310 and 311 of the reported hearings held before the Senate Committee on the Judiciary concerning this bill that there was some intention to distinguish between games wherein no skill was exercised in the operation of the game and games wherein some skill was present. This intention is not specifically or even inferentially provided in the bill and for this reason I suggest that the following amendment be made to section 1 of the bill by adding the following proviso at the end of the first proviso:

*"Provided further, That the provisions of this subsection shall not apply to any game, machine, or mechanical device which is so constructed or devised as to make such result of the operation thereof depend in part upon the skill of the player, and which may return to the player thereof neither money nor property, but only the right to replay such device, and any right of replay so obtained shall not represent money or property or evidence of entitlement to receive any money or property."*

This provision would effectively extend the provisions of the act to cover the so-called pointmaker machines, which were cited as a "no skill" game, but would not affect the amusement games wherein skill is involved and which only award free plays.

If, in spite of what I have attempted to show to this committee as to the attitude of the various States with reference to free-play pinball games, this committee feels that the above suggested amendment cannot be made to the bill, I would further suggest that at the very least, the various States be given the opportunity to accept the provisions of this bill insofar as the new category provided by section 1(a)(2)(B) of the proposed bill is concerned. The present act provides that a State may, by appropriate legislative action, provide for an exemption from the provisions of the law as it relates to the presently defined gambling devices. The following suggested amendment would not change this provision as to those devices that are clearly slot machines within the present definition, but it would give each State the right to determine for itself, if the new provision of proposed section 1(a)(2)(B) of the act should apply.

Section 2 of the act as so amended would then read as follows:

*"Sec. 2. It shall be unlawful knowingly to transport any gambling device to any place in a State, the District of Columbia, or a possession of the United States, from any place outside of such State, the District of Columbia, or possession: Provided, That this section shall not apply to transportation of any gambling device, as defined in section 1(a)(1) and 1(a)(2)(A) of this Act or a sub-assembly or essential part intended to be used in connection with such device, to a place in any State which has enacted a law providing for the exemption of such State from the provisions of this section, or to a place in a subdivision of a State if the State in which such subdivision is located has enacted a law providing for the exemption of such subdivision from the provisions of this section: Provided further, That this section shall not apply to transportation of any gambling device, as defined in section 1(a)(2)(B) of this Act, or a sub-assembly or essential part intended to be used in connection with such device, to a place in any State unless and until such State has enacted a law providing for the adoption of this section as applied to devices defined in section 1(a)(2)(B)."*

As we understand the Attorney General's statement, S. 1658 is proposed not so much as a necessity in itself, but rather as one of a package of some seven bills, each with a different subject but all with the intended common purpose—a Federal strike at organized crime.

We concur in the desire of all good citizens to eliminate organized crime.

We submit definitely, however, that S. 1658 is not necessary to such purpose. We submit further that enactment of S. 1658 would have no effect upon or be of material concern to organized crime activities.

On the contrary, S. 1658 would inflict untold harm upon a legitimate industry and upon many thousands of small business people who depend wholly or in part on coin-operated equipment including pinball games, for their livelihood. Corollary damage would result in the fields of employment and in tax revenue on both Federal and local levels.



The manufacturers and suppliers in our industry provide employment, on a conservative estimate, for over 15,000 people. In the United States alone there are approximately 20,000 "operator" users of our products—the term "operator" applying equally to a range of from a 1-man family enterprise to firms employing up to 100 people.

These "operators" serve approximately 250,000 "locations"—i.e., small business establishments—where the equipment is placed on a share-the-earnings basis for the use of the location patrons.

In the main, all of these people are reputable members of their communities and have no connection with organized crime.

Reference has been made to the labor-management relations (McClellan committee) hearings and such coin-machine abuses in some vending, music and pinball cases as was cited therein. Unquestionably such abuses are not good for either the public in general, or, most emphatically, for the industry itself.

We submit, however, that in proportion to the total number of people engaged in this business the percentage of undesirables is a minute fraction, probably no more nor less than that of any other business in which a comparable number of people are engaged. Exactly such a fact was stated in the official committee report.

We believe that in our industry's case, the only necessary and effective means of eliminating the relatively few undesirables lie in the wholly adequate policing powers already existing at the local levels and the economic pressures of competition from the more soundly based legitimate businessmen in this field.

The concept that some or any type of pinball games are a major instrument of organized crime gambling is incorrect. It would be a great injustice to destroy the amusement pinball industry and materially damage its allied music and vending fields in the process because of such a fallacy.

Mr. NELSON. Thank you, sir. The company that I represent manufactures all types of coin-operated devices, pinball games, bowling games, shuffle games, baseball games, rifle target games, kiddie rides, vending machines, in fact anything that is in the coin-operated field. This is a company that is wholly owned and controlled by one family in Chicago.

The company started in the early 1930's with some five or six employees and it has grown to an organization of approximately 1,500 persons. My client manufactures these games and sells them to distributors who in turn sell them to operators.

These are legitimate people. I have represented this company for more than 25 years. We don't deal with hoodlums. We don't deal with criminal elements. There is no organized crime in this industry that I am aware of. The games that are manufactured and sold by my client are completely legal in the State of Illinois.

We do not manufacture and sell anything that falls within the purview of the Johnson Act. The games were held to be legal in our State by a Supreme Court decision and reaffirmed by legislative enactment as late as June 1961, at which time our legislature clearly spelled out that all the types of games manufactured by my client are legal in all respects.

I am worried on behalf of my client, and my client is worried by reason of what we consider to be general and ambiguous language which could bring within the purview of the act virtually every type of device that is manufactured by my client.

Briefly at this point I will only speak to the uncertainty that arises because the bill which describes "designed and manufactured primarily for use in connection with gambling" subsequently refers to a person that may become entitled to receive, as a result of the application of an element of chance, any money or property.

We say that that language is subject to the ultimate use to which the device is put to.

The CHAIRMAN. What language is that? I am sorry.

Mr. NELSON. I am speaking of the language that is contained in S. 1658 which refers to "designed and manufactured primarily for use in connection with gambling," and subsequently speaks about the person who may become entitled to receive, as the result of the element of chance, any money or property.

I respectfully submit that that language would normally be construed to apply to what happens after the device leaves the plant and is actually used. I will elaborate on that somewhat more fully a little later.

We feel we have a grave concern in this bill and have a right to be worried about the ambiguities and the uncertainties. Public Law 906, which is sought to be amended, provides severe penalties, 2 years in jail, \$5,000 fine.

As I stated earlier, my client has scrupulously kept within the law. My client does not manufacture and sell any device that could possibly fall within the purview of the Johnson law. What we do in our own State is legal. I submit there is nothing in the annals of Congress or its committees that show any organized crime in the coin machine industry.

There were some comments made in the McClellan hearings as to certain thugs and racketeers who sporadically appeared within the industry, but when the report concluded, it said that, with the absence of a few people, the coin machine people were good, legitimate business people, and we submit that this is true.

Pinball games as such, and I am referring to both types of devices, the device that is manufactured by Mr. King's client and the device that is manufactured by my client, are legal in many States without the free-play attachment. They are legal in 48 States. The only two States in the Union that bar the devices without free-play are Alabama and North Carolina.

If the games contain free-play mechanisms, or a mechanism which makes available free plays to the player, they are legal in 29 States. The devices manufactured by my client are sold essentially to the same distributors who buy the products manufactured by Mr. King's client. The same people that deal in the Bally pinball game deal in a Gottlieb pinball game.

The CHAIRMAN. Do you set forth the names of the States in which—

Mr. NELSON. I will be most happy to, sir.

The CHAIRMAN. You say that 29 States have legalized the free-play machines, which you say are legitimate?

Mr. NELSON. Either by statutory enactment or by court decision.

The CHAIRMAN. Will you include the States that have so concluded as a part of their law, either by an act or by court decision?

Mr. NELSON. I will be most happy to do that. I was afraid my memorandum was getting too long. I listed the court decisions that were most favorable to our viewpoint. They are set forth on pages 7 and 8, but I will be very happy to write a letter, as soon as I return to my office, covering the statutes on each and every State in the Union as to games that are manufactured by my client and other people in the industry.



The CHAIRMAN. If you will pardon the interruption here. You said that in 29 States it has been determined either by enactment of State law through the legislature or by court decision that the free-play game is legal?

Mr. NELSON. Yes, sir.

The CHAIRMAN. That is the information I want.

Mr. NELSON. Would you want me to read it into the record now, or send it by a supplemental memorandum?

The CHAIRMAN. You may supply it for the record.

Mr. NELSON. Thank you.

(The information referred to above follows herewith:)

MURTAUGH & NELSON,  
Chicago, Ill., January 23, 1962.

Re H.R. 3024, H.R. 8410, and S. 1658.

MR. OREN HARRIS,  
*Chairman of the House Interstate and Foreign Commerce Committee,*  
*Washington, D.C.*

DEAR MR. CHAIRMAN: Pursuant to the discussion that was had at the time of my appearance with reference to the above bills on Friday, January 19, 1962, before your committee, I call to your attention that pinball games without free play features are legal in all States except Alabama and North Carolina.

I am hereinafter summarizing what, in my opinion, is the status of the law in the 50 States and the District of Columbia with reference to "free play" pinball games:

A. States in which there is a State licensing law, a favorable court decision and an intention to legalize free play operation actually expressed in the State statutes:

1. Illinois

B. States in which there is a State licensing law and a favorable court decision but no expressed intention in the State statutes to legalize free play operation:

1. Massachusetts

2. Oregon

C. States in which there is a State licensing law and no court decision, but an expressed intention in the State statutes to legalize free play operation:

1. Louisiana

2. Mississippi

3. South Carolina

4. Tennessee

D. States in which there is a State licensing law but no court decision and no expressed intention in the State statutes to legalize free play operation:

1. Arkansas

2. Maine

3. Maryland

4. Washington

5. West Virginia

E. States in which there is no State licensing law but a favorable court decision and an expressed intention in the State statutes to legalize free play operation:

1. Indiana (providing free play is immediate and unrecorded)

2. Kentucky

F. States in which there is no State licensing law and no expressed intention in the State statutes to legalize free play operation, but a favorable court decision:

1. California

2. Colorado

3. Kansas

4. Minnesota

5. Missouri

6. Pennsylvania (illegal if multiple coin games)

G. States in which there is no State licensing law and no court decision, but an expressed intention in the State statutes to legalize free play operation:  
None.

H. States in which there is no State licensing law and no court decision and no expressed intention in the State statutes to legalize or prohibit free play operation:

1. Alaska
2. Arizona
3. Delaware
4. Georgia
5. New Hampshire
6. Rhode Island
7. Utah
8. Wyoming
9. Montana
10. South Dakota

I. States in which there is no State licensing law and no court decision but a State statute expressing an intention to prohibit free play operation:

1. Alabama (court decision prohibiting all pinball games—not just free plays)
2. Virginia

J. States in which there is no State licensing law, no State statute expressing a specific intention to prohibit free play operation, but a court decision construing the State statutes as prohibiting the games.

1. Connecticut
2. Florida
3. Hawaii
4. Idaho
5. Iowa
6. Nebraska
7. New Jersey
8. New Mexico
9. North Dakota
10. Ohio
11. Oklahoma
12. Texas
13. Vermont
14. Michigan
15. North Carolina
16. Wisconsin

K. States in which there is no State licensing law, but a State statute expressing a specific intention to prohibit free play operation and a court decision construing the State statutes as prohibiting the games.

1. New York

L. In Nevada all games are permitted. In Washington, D.C., the games are legal by court decision.

Jurisdictions in which pinball games awarding free plays are legal:

Category:	Number of jurisdictions
A-----	1
B-----	2
C-----	4
D-----	5
E-----	2
F-----	6
H-----	10
L-----	2
Total-----	32

Jurisdictions in which pinball games awarding free plays are prohibited:

Category:	Number of jurisdictions
I-----	2
J-----	16
K-----	1
Total-----	19



I believe I should also call to your attention that there is sometimes a division of authority within a State because cities, villages, towns, and counties frequently have the authority to prohibit or regulate pinball games.

Hoping that the above data will be of some help in clarifying the status of pinball games throughout the United States and again thanking you for the courtesies extended to me in being allowed an opportunity to appear before your committee, I am,

Yours very truly,

MURTAUGH & NELSON,  
By MARTIN M. NELSON.

Mr. NELSON. I have mentioned that free plays are considered proper in some jurisdictions and therefore legal under the interpretation of the laws of that State. I want to be completely fair and I will in my memorandum set forth those States where the games are illegal, as well.

I submit that not only the games that were displayed the other day, but all other types of amusement games manufactured by my client could be subject to the interpretation of the law, if as a result of the end use the proprietor might award a prize, because it speaks about the player becoming entitled to receive at a future date.

All of this is set forth in my statement so I will pass it over quickly. There was something said by the Attorney General on Tuesday, and also by Mr. King, with reference to the Supreme Court decision. That is *United States v. Korpan*. That decision in no way dealt with the legality of pinball games as such. The decision was a decision construing a Federal taxing statute, old 3267 of the Internal Revenue Code, now presently section 4461.

The Government won that case in the district court. It was reversed 3 to 0 in our Court of Appeals of the Seventh Circuit and, in a split decision, the Supreme Court again affirmed the Government, but all that decision held was that if free games were redeemed for cash, then in such event it was a gambling device. It did not hold that a pinball game as such was a gambling device. It held that if a game was put to an unlawful use, then it would be subject to the \$250 tax.

Mr. King also referred to a brief and he had it introduced in evidence. It was a brief that he filed as *amicus curiae* in that proceeding, and I might add the Supreme Court rejected that brief and refused to consider it.

Much was said about the Internal Revenue regulations pertaining to coin-operated devices. There is only one case in which the Government was sustained and that was a default case in southern Illinois where nobody appeared.

The regulations are presently being contested in two jurisdictions. One is in the State of Kansas, where all of the proof is in and the matter is under advisement. The other is in the Court or Claims in Washington and that case is set for trial on March 20.

The Internal Revenue determination becomes interesting because, as I read this law, much will depend upon the construction that is placed upon whether a particular device is or is not a gambling device by the Attorney General, and he can promulgate additional regulations.

Now, these same games that my client manufactures and sells, and the games that are manufactured by Mr. King's client, are located in

the Washington National Airport, the Greyhound bus station, and many other places where free games are never redeemed.

The case in the Court of Claims is squarely in point. It involves the location at the National Airport. It involves a Greyhound bus depot where the games have been played, free games have been obtained, and the players have played the games off and no prize or no cash reward has ever been given.

When Assistant Attorney General Miller appeared before the Senate committee, at which time I was present, he stated, when the question was asked of him, whether or not the games were manufactured and sold by my client that were on location, let's say, at the National Airport, would be gambling devices, "No, sir, I don't think so. In my opinion they would not be gambling devices."

Those same games under the Internal Revenue Service regulations are held to be gambling devices because they have multiple coins and certain meters, so I submit that two reasonable, intelligent, well-educated men, one the Assistant Attorney General of the United States, another apparently a member of the Internal Revenue Service, have arrived at two different interpretations concerning the same games and the same location. I feel that if this law became effective we would be subject to the same whims and the same uncertainties.

My client manufactures many, many different games in the course of a year, probably no less than 12 or 15 different models, and we wouldn't know as each and every model entered into interstate commerce what the final interpretation might be by the Attorney General's office, whether by reason of some great popularity or some end use, those games might not be considered to be gambling devices.

I thought it would be wise to call to the committee's attention that back in 1950, when the Johnson Act was being considered, this same committee in its Report No. 2769, after having studied this problem for quite some time included in the report:

In view of this testimony—

this was predicated upon the testimony of the Attorney General—

and because of its intention to exclude pinball machines and similar amusement machines, as well as certain machines and devices commonly used, for instance, at carnivals and livestock shows, your committee decided to adopt a definition of "gambling devices" different from the one contained in the Senate bill.

I would think that unless there has been some affirmative showing of organized crime, some different concept, the views of the committee should not change during the ensuing years. When we speak about the element of chance I submit that, without belaboring the issue, the element of chance is present in every one of these games.

The only fair test, in my opinion, is the test that is applied by most of the localities, either by State statute or by court decision, and that test invariably is whether there is an element of skill. That is precisely the language in our State statute in Illinois. It says if the game depends in part upon the skill of the player, then it is an amusement device. That same statutory language is used in other States.

Many courts have handed down decisions predicated upon the element of skill. In the case we had at home that went to our supreme court, it was a split decision. The supreme court spoke lightly of the game and said that it couldn't see a great deal of amusement. It could see some amusement. It couldn't see an overwhelming amount



of skill, but it was satisfied from the evidence that there was skill. This was a set of facts where we had a hearing for 3 days. We had a parade of witnesses who testified as to the different aspects of the game. The State's attorney had an opportunity to put his witnesses on.

It seems that that type of reasoning is much more logical rather than predicated upon an element of chance, which is present in any type of device. I don't want to belabor the uncertainties of the language, but on pages 304 and 305 of the hearings before the Committee on the Judiciary of the U.S. Senate this uncertainty is so clearly pointed out by other witnesses, not myself.

Mr. Miller in the middle of page 304 says:

Now, the normal pinball machines that were referred to by, I believe, the representative of the Bally Manufacturing Co., which are found at the National Airport, are not primarily designed or manufactured for gambling purposes.

Over at the National Airport and all of these locations there is a regular arcade. There are probably 30 different games in the National Airport. Those games are never used for gambling. They have some skill, but seemingly under the Attorney General's viewpoint if these games were located, let us say, at Friendship Airport—if you happen to come into Friendship Airport instead of Washington Airport you would find that the free games are redeemed for cash. I played the games over there and they have a legend which tells you what you are entitled to receive. They are precisely the same games. There is not an iota of difference. There may be some differences that may be made by the operator for his convenience, but insofar as we know they are substantially the same.

I would like to point out that these two games that were displayed here the other day were part of a handpicked demonstration. My client's game was operated by means of insertion of a 10-cent piece. Actually, virtually every game that is manufactured and sold by my client has a 5-cent operation. Mr. Gottlieb's game was operated by a 5-cent piece and virtually every game manufactured and sold by him is a 10-cent operation. The models had been changed. They were not in their original form.

Incidentally, my client's game was an old game, 5 years old, and the model that was used there had a meter for cancelling the free games that had been obtained, and it never had such a meter when it left the factory. It was a change that took place somewhere along in the field.

Mr. King spoke of hundreds and hundreds of dollars played in these machines. There will be industry representatives who will follow me who are factually closer to the field, but from all of the figures I have, the statistics point out that the national average on coin-operated pinball games is somewhere between \$40 and \$50 a week and with few exceptions that amount of money is split directly between the location owner and the operator. Of course the operator out of his share has to pay for the amortization and depreciation on the machine. The location owner has certain taxes to pay. Most of these machines are licensed not only by State authorities in Illinois with a State tax, but you have city and village taxes as well.

The amount of local revenues is very substantial throughout the United States. Incidentally, there were many coins deposited in the

particular machine that was manufactured by my client in the multiple coin. The national average on that, I am informed is between three and four coins deposited. In other words, most players, whether it would be at the airport or some other spot, will probably spend 15 or 20 cents to play that game.

One other comment on the interpretation we might be subject to. The Assistant Attorney General who appeared before the Senate committee drew this distinction. He is speaking about a normal machine. He says:

A normal machine, where you shot 5 balls and tried to get 5 lights in a row, and maybe you could win 20 free games—

that is precisely the type of game that my client manufactures, the bingo type, you try to get five across, five vertically, or five diagonally—

no, I would say that was not primarily designed for gambling purposes.

The uncertainty that exists in my mind and I think almost any reasonable person would agree is this: If you have 20 or fewer free games you are all right. If you have 21, 25, 30, you are wrong. Can that be the distinction?

There was something said in the committee report that dealt with the letter that Mr. White, Assistant Attorney General, wrote seeking to possibly create an exemption, and there was some comment made here as to whether that exemption was created. I don't think that an exemption of any sort has been created. Mr. White set forth language which as a proviso would recite—

That it shall not be unlawful to transport in interstate commerce any device commonly known as a pinball machine into any State in which the transported device is specifically enumerated as lawful in a statute of that State.

I said that I don't think that would be the correct way of doing it. It seems to me that if it is lawful by statutory enactment or court decision, that could conceivably be applicable. He has it on the basis where you have to specifically enumerate the device is lawful, and in virtually every instance this would mean future legislation by the different States.

If the industry were to continue in business it would have to go to each State legislature and ask for enactment, enumerating the particular device as lawful. A comment was made as to the language contained on page 2, line 6, where, after the usual exemption applicable to racetracks, it speaks about "or other licensed gambling establishments."

I don't feel that that would be of any protection to an area where the games are lawful. I don't think a drugstore or a tavern would normally be construed as another type of "licensed gambling establishment." That would be a strained construction that I don't think we could hope for, at least in my opinion.

It seems to me that this is an unusual situation, that a bill, which has as its purpose the prohibition of the transportation of gambling devices, permits the transportation of such gambling equipment into particular States for uses at racetracks or other licensed gambling establishments where betting is legal, but it would prohibit the transportation of amusement equipment into a State where it is perfectly legal.



It is just the converse of what it should be. It seems that the Attorney General in his concept of the law presumes illegality when the presumption should be legality until the game is prohibited by State action, or by an unfavorable court decision, or an unfavorable statute.

The normal concept would be that that which you are manufacturing and selling is legal until it is found out to be otherwise. I have mentioned that I think a logical distinction is as to the application of skill and I tried to make a suggestion, which is contained on pages 16 and 17 of my statement, of what I thought would be a logical distinction which would permit the use of games where there is an element of skill, but would still, if the committee sees fit, prohibit the games where there is no element of skill at all. And there are other devices besides pinball games, bowling games, and shuffle games that are before this committee. That I know.

I think that is a very logical amendment. As an alternative I have suggested an amendment on pages 18 and 19 which would carry out I think the purposes expressed in Mr. White's letter to the committee and which is included in the Senate report, except it would permit use and operations in areas where the games are already lawful and they have been held so either by statutory enactment or court decision.

In conclusion, I feel that there has been so much said before this committee without any relevancy as to the coin machine industry. There has been nothing to show a hookup between manufacturers and distributors and operators with the organized crime as set forth in the purpose clause of the bill, and the statements made about X number of murders down in Florida, and all this sort of thing, have no relevancy at all and it just isn't fair. It violates all concepts of law to indict an industry without any proof as to something that has been done that is wrong. That is all I have to say.

The CHAIRMAN. Mr. Williams, any questions?

Mr. WILLIAMS. Mr. Nelson, did I understand you to say the Bally Manufacturing Co. makes the so-called bingo machine of the type which we had in the committee room the other day?

Mr. NELSON. Yes, sir.

Mr. WILLIAMS. I believe you also indicated that when it left the factory it did not have the free game runoff put on under it?

Mr. NELSON. I stated that as to this particular model, and this was pointed out to me by a member of the firm, there was a meter included that was not included when it left the factory, and that was a meter which would register the free plays that had been obtained and played.

Now, I don't want to leave any incorrect impressions. My client has made games with such a meter. It happens to be—I think I am right within a comparatively short time—that none of those meters have been placed on games for a period of some 4 or 5 years.

Mr. WILLIAMS. Who manufactures those meters, Mr. Nelson, do you know?

Mr. NELSON. I can find out by just turning around. It is a supplier. We don't make them. It is something like Michael switches.

Mr. WILLIAMS. Is the machine made specifically so it is easy to attach that meter?

Mr. NELSON. I think it would take a skilled mechanic. Mr. O'Donnell says it could be done quite easily. I don't profess to be an expert as to the technical aspects, though I participate in litigation, but let me first correct this meter question.

Every one of these games, any game manufactured, a bowling game, or a shuffle game, or a pinball game, has to have one meter which evidences to the player the number of free games he is entitled to. They all have that. I assume that the question raised as to other meters would be the supplemental meter, which in this particular instance was placed on a game manufactured and sold by my client and was not in that particular condition.

We are not trying to beg the issue. My client has had games with that type of meter. It happened to be that that game did not include the meter. It did not have the meter included when it left the factory, and it also happens to be that those types of meters have been abandoned for some 4 or 5 years on my client's games.

Mr. WILLIAMS. But your client does put the button on the machine which can simply be pressed and run all the games off at once?

Mr. NELSON. Yes, sir. It is really a toggle switch.

Mr. WILLIAMS. I understand.

Mr. NELSON. Yes, sir.

Mr. WILLIAMS. That does come as standard equipment?

Mr. NELSON. That is right.

Mr. WILLIAMS. The difference between that machine and the other machine which was displayed in the room here was that in order to run the free games off on the small machine it was necessary in each instance to shoot one of the balls?

Mr. NELSON. Yes, sir. May I say it is also my understanding, Mr. Williams, that you can take the free plays off of almost all of these games by just pulling the plug. It could be done just that easily. May I make this observation, sir? If you happen to be playing a game over at the National Airport, or Greyhound Bus Station, or any of these places I mentioned, and you did get a lot of free games, and you are just a transient, if it didn't have an arrangement where you could cancel the games by a switch—and, after all, our people are electronic geniuses in this field—it would just be unrealistic.

My client had several Army-Navy "E" awards. It made a gunnery trainer which was an adaptation of a coin-operated game, and this was used by the Army, the Navy, and the Air Force. I happened to be a gunnery officer in the U.S. Navy during the war, and we actually used one of these devices in training.

It would just be unrealistic for our people not to have a switch of that sort on and leave it where the proprietor would go over and pull the plug. It just wouldn't make sense.

Mr. WILLIAMS. As I understand it, the other machine would not run them off simply by pulling the plug.

Mr. NELSON. I believe you would have to shoot one ball on the other machine, at least, and then I think it could be disengaged and the games run off. I believe that is true. It is just a slight difference.

May I add this: There is an awful lot said about the large number of free plays. One game had 99 free plays and the other had 999. Players like to shoot for high scores. I am not saying in any way that these games under certain conditions aren't used for gambling by the



proprietor and the location owner, whatever the arrangement may be, but most people would rather play a game where they can get an astronomical amount rather than play a game where they can only get a few free plays, and they like to play for the higher scores. That is evidence by the higher scores.

They all have huge sums. They don't deal in a score of 30 or 40. They deal in a score of 300,000. The players like to score 800,000 on the game. You wouldn't even need a meter to show what the player is entitled to. It would be just that simple. If the proprietor thought he wanted to make an arrangement where he would give a prize for a high score or pay the man something, he could just take those huge figures, 800,000, and divide it by whatever you wanted to, 1,000, let's say, and it would be 800 to 1.

It is just another method of doing the same thing. I don't think that is the test. I think the test is, Does the game require skill? It is just not a mechanical operation, and if it requires skill, under most State laws it would be gambling if cash is paid, and so on.

It is the end use to which it is put. That isn't true of all jurisdictions. I mean, there are States where they permit giving a merchandise prize. I mean each jurisdiction is a separate study.

Mr. WILLIAMS. What percentage of these machines that you manufacture would you think are being used as gambling devices? I am speaking of the bingo-type machine.

Mr. NELSON. I could only give a guess. As I say, to me the approach is this simple. If I take a plane from Chicago and I land at National Airport they are not used for gambling. If I take a plane from Chicago and I come in at Friendship Airport they are. That is the way it goes throughout the country.

If they are in the bus stations, and the drugstores, and the average places in most communities, they can't be used for gambling. They are not being used for gambling.

Mr. WILLIAMS. What would be your estimate? Would it be more than 50 percent, or less than 50 percent, or more than 90 percent?

Mr. NELSON. Would you just want a guess on my part? It would just be an uneducated guess. I don't play that much nor do I travel around the country that frequently. I think that perhaps half-and-half, or something of that sort, but when you speak of gambling, there are many variations of gambling.

Mr. WILLIAMS. I understand that.

Mr. NELSON. Some of these proprietors pay a prize. They give a bottle of whisky for the high score for the week.

Mr. WILLIAMS. If you put one of these machines side by side with one of the other type where you have all of your bumpers, and your baffles, and so forth, and prizes are not awarded, does your machine get any play at all?

Mr. NELSON. Oh, I think so. I think so. I think a very fair test is, as I say, the National Airport. I have seen 15, 20 people there, almost every game in use, just people waiting because of delay in planes, or having arrived early to check in. They are getting a tremendous play. It is considered a profitable operation.

There is a suit that is going to trial against the Government on March 20. We had asked for an earlier date and the Government asked for a continuance. We say that the Government has wrongly

assessed and collected the \$250 tax and it can't be anything but an amusement tax.

The CHAIRMAN. Is the \$250 tax a tax on a gambling device?

Mr. NELSON. Yes, sir.

The CHAIRMAN. And not on an amusement device?

Mr. NELSON. No, it is a \$10 tax on an amusement device.

The CHAIRMAN. And the \$250 is a tax under the internal revenue laws?

Mr. NELSON. Yes, sir; section 4461-4463 of the Internal Revenue Code.

The CHAIRMAN. Then the Government is in the position of outlawing gambling devices on the one hand and legalizing them on the other; is that about right?

Mr. NELSON. Yes, sir.

The CHAIRMAN. Through collection of a tax?

Mr. NELSON. Yes, sir.

The CHAIRMAN. In other words, they won't let you play the game on the one hand and on the other hand if you play it in violation of the law they make you pay a tax on it?

Mr. NELSON. That is true; yes, sir. I think it is an improper standard. That is the reason we filed this proceeding in the Court of Claims, because we thought we would get to an early conclusion. It is our action against the Government. We paid the tax under protest. We think the Government is wrong.

The CHAIRMAN. I see your associate there shaking his head at the statement I made, indicating that that wasn't true.

Mr. NELSON. Mr. Walsh?

Mr. WALSH. I didn't understand.

The CHAIRMAN. I noticed you shaking your head at what I had just said.

Mr. WALSH. No, sir; what you said I think is true.

Mr. WILLIAMS. May I ask one more question, please?

Mr. NELSON. Yes, sir.

Mr. WILLIAMS. In regard to these meters that keep account of free games inside the machine, you indicated it was a very simple matter to hook one of those meters up to the machine. Is that because of a particular type of wiring that is put in the machine for that purpose, to make it an easy matter to attach those meters?

Mr. NELSON. May I refer to this gentleman from the factory?

The CHAIRMAN. I think you better identify yourself for the record, Mr. O'Donnell, if you are going to be called on to answer these questions.

Mr. O'DONNELL. My name is William O'Donnell, and I am general sales manager of Bally Manufacturing Co., in Chicago. No, I wouldn't say it would be fair to say that the wires are in there just for this purpose.

However, all these machines have all sorts of wires, and it would be a very simple matter. Incidentally, in the Gottlieb machine that was displayed here, there was a meter on the inside of the machine to record the total play put into that machine. By total play I mean either coins dropped in or free plays played back.

It would be a very simple matter to take that total play meter that they had on the inside of the machine, the same as we do, and hook



it up to the free plays runoff. I am not saying that they have designed this machine for that purpose, but I am saying it would be a very simple matter to do this.

Mr. WILLIAMS. What I am referring to is this. Is the machine equipped in such a fashion that it makes it a simple matter to hook this type of meter up?

Mr. O'DONNELL. Yes, it is.

Mr. WILLIAMS. Would it be a different matter if there was no such thing as one of those meters? Would it be wired exactly in the same way and hooked up exactly in the same way as if the meter didn't exist?

Mr. O'DONNELL. No, naturally not.

Mr. WILLIAMS. In other words, the manufacturer actually makes it easy for the meter to be put in there?

Mr. O'DONNELL. That is correct.

Mr. WILLIAMS. On purpose?

Mr. O'DONNELL. That is correct. Well, I am talking about a competitor at this moment, Congressman. I don't think it is fair for me to say what their intent is.

Mr. WILLIAMS. You can speak for your own company, though.

Mr. O'DONNELL. Our meters are in there. We put two meters in our machines. The meters that we put in the machine are not hooked up to the free plays runoff, the way the demonstration was here. One meter we put in our machines is a total play meter that records all the plays on the machine. The other meter in the machine is a free-play meter and this records the free plays won.

Now, the reason for these two meters is they are actually popularity tests. I will draw a parallel. You are dealing with the public and you don't know which machine will be popular and which will not, so therefore the operator can go in each week or each day and see exactly what the machine has been doing.

If the players have been winning too many free plays the machines will not make any money because they will stand there and be playing free plays all day long. If they do not win enough free plays, then the game will lose its popularity very fast because they will say, "Well, I can't win any free plays on this," and this is the reason for the meters on the inside.

Now, it is a simple matter to take any of those meters and hook it up the way they had our machine hooked up in this demonstration.

Mr. WILLIAMS. There is another attachment or device built into that machine according to the testimony of Mr. King which would act more or less as a governor on the number of free plays which could be put out. That's the little round thing down at the bottom at the back of the machine which he said had some kind of a worm attachment or something in it which governed to some extent the orders which would come up on the board.

Mr. O'DONNELL. That is so.

Mr. WILLIAMS. What is the purpose of that?

Mr. O'DONNELL. To control the machine.

Mr. WILLIAMS. To keep too many free plays from coming up?

Mr. O'DONNELL. That is it exactly.

Mr. WILLIAMS. Or in another case where free plays have not been coming up, to permit them to come up?

Mr. O'DONNELL. That is exactly right, Congressman.

Mr. WILLIAMS. That is all.

The CHAIRMAN. Mr. Nelsen?

Mr. NELSEN. No questions.

The CHAIRMAN. Mr. Rogers?

Mr. ROGERS of Florida. Just a question or two, Mr. Chairman. Thank you. In speaking of the devices to determine the free plays where the machine is either giving enough or not enough of the free plays, why cannot this be done by research by the company before your machines are put out from your plant?

Mr. O'DONNELL. We tried to do that as best as we can, but when you are dealing with the public, there are players that are excellent shooters on these machines, and in an airport, for instance, there are many transients coming through. Well, the play on the machine, we call stupid. They don't play these machines as well as in the corner tavern, we will say.

Mr. ROGERS of Florida. Could you not, if it is going to be in a corner tavern with a certain level of skill required, just put it out from the plant without having all these devices which can be manipulated? Why could you not have certain standards set in your machine in your plant?

Mr. O'DONNELL. We do. We certainly try. But these standards are not always correct because in all of these machines there is an element of chance and there is an element of skill. Well, when you have to combine the two it may be different in different parts of the country the way they play the machine.

Mr. ROGERS of Florida. But what I was thinking about was in order to get away from the possibility of the machine being used for gambling, if you just didn't have these devices on it, it could be set up directly from the plant with a certain degree of skill required, and if they were to be used as you say in the places where you are more likely to have skilled players, a certain type machine could go there, and maybe another machine in the airport where you do not have such skilled players. Why could not that be done?

Mr. O'DONNELL. I am afraid on one particular machine we would have to set 10 or 12 standards, possibly 20, and we would no longer be making one particular machine. We would be making 15 different models to accommodate every section of the country, possibly more than that.

As well as possible, Congressman, we strive to do that, to set a standard that, we will say, is the national average, but that is not always correct on each particular machine that comes out.

Mr. ROGERS of Florida. Thank you. Thank you very much, Mr. Chairman.

The CHAIRMAN. Governor Thomson?

Mr. THOMSON. No questions.

The CHAIRMAN. Mr. Nelson, it is a little bit difficult for me to understand thoroughly just what the intention is of the industry you represent toward the purpose of these machines and just what you seek to accomplish here by your appearance and testimony and suggestions.

Let us see if we cannot determine and pinpoint just what is intended. The Attorney General seeks authority to deal with mechan-



ically operated gambling devices that deliver money or property whereby organized or syndicated gambling may nourish. You do not oppose that objective?

Mr. NELSON. No, sir.

The CHAIRMAN. That is what I understand you said.

Mr. NELSON. No, sir, not at all.

The CHAIRMAN. The Attorney General seeks authority to prohibit the interstate shipment of a machine or a mechanical device designed and manufactured primarily for use in connection with gambling and which when operated may deliver, as a result of the application of an element of chance, money or property. Do you oppose that objective?

Mr. NELSON. Certainly not in those instances where the machine itself delivers the money or property. That is clearly a gambling device.

The CHAIRMAN. All right. The Attorney General explains that to that extent they will have little, if any, difficulty dealing with that kind of operation, which lends itself to organized or syndicated crime operations. What the Attorney General then discussed in addition thereto is the type of machines that can be and will be operated mechanically whereby organized or syndicated crime can through a loophole in the present law accomplish the same objective, and that is to have the machine made in such a manner that it will register free plays to such an extent that money or property will be paid. That is where you raised a question as to how it can be accomplished.

Mr. NELSON. Yes, sir.

The CHAIRMAN. Then does that mean that it is a question of defining what could be considered as an amusement machine in contrast to what would be considered a gambling machine?

Mr. NELSON. Yes, sir. That is just about it.

The CHAIRMAN. In your opinion, what would be considered an amusement machine?

Mr. NELSON. I think basically it is a device that embodies some skill, where a player improves his score and becomes more proficient as he studies the game and as he plays it.

The CHAIRMAN. Then suppose we take that one step further. There is a combination of chance and skill. Do you think that should be exempted?

Mr. NELSON. I would say there will always be the element of chance. That cannot be removed. The element of chance will always be present. Weight must be given to the element of skill. That should be the distinguishing line.

The CHAIRMAN. How then are you going to deal with the organized gamblers who are taking advantage of that machine?

Mr. NELSON. Well, sir, I don't think there has been a showing about any organized gambling on these devices.

The CHAIRMAN. The Attorney General has used the figure of \$250 million a year which he says is the take on these machines.

Mr. NELSON. I haven't seen the record, sir.

The CHAIRMAN. I haven't heard anyone say that that is not a fact.

Mr. NELSON. The figures that are submitted by people in the industry indicate that the average machine takes in between \$40 and

\$50 a week. Operators will testify subsequently to myself, people who actually operate these machines, that that amount of money is split between the location owner and the operator.

The CHAIRMAN. You are talking about something else. Let us get at the evil here and see if we can accomplish something on that score. Let us not talk about the side of it that I think even the Attorney General suggests is amusement and he does not object to it, but let us talk about the other side, the loophole that permits organized crime to take over on this kind of an operation.

Tell the committee how we can get at that and still preserve what everybody seems to want to preserve.

Mr. NELSON. I repeat, I don't know of any organized criminal activity in this industry and I don't know of any in the record that so substantiates that. I have seen nothing.

The CHAIRMAN. That doesn't answer my inquiry at all as to how you are going to keep this kind of a device from being used for purposes that you say it is not primarily manufactured for.

Mr. NELSON. It seems to me that the end use is the test and each State makes its own determination, and not to belabor the point, the device that goes into one area is used entirely different from a device in another area. To me, it is just that simple.

The CHAIRMAN. You evidently are speaking from the viewpoint of the well-intentioned manufacturer who has perhaps no interest in what happens to his product after it leaves his plant. I cannot believe that that would be true in legitimate operations of your company and others.

Mr. NELSON. I can only repeat again I do not know of any organized groups, or criminals, or other undesirable elements that are taking over these games and operating them. I just am not aware of them, and I have represented this company for over 25 years.

The CHAIRMAN. Who are the distributors of your products, as an example, in St. Paul?

Mr. O'DONNELL. A fellow by the name of Harold Lieberman.

The CHAIRMAN. Who is your distributor in Minneapolis?

Mr. O'DONNELL. This same party.

The CHAIRMAN. Who is your distributor in Milwaukee?

Mr. O'DONNELL. A company by the name of Postor Distributing. They are just being bought out I believe by Automatic Canteen Corp.

The CHAIRMAN. Who is your distributor in Chicago where you manufacture these machines?

Mr. O'DONNELL. At the present moment, the son of the founder of our company. His name is Donald Maloney and the name of the company is Donan Distributing.

The CHAIRMAN. And I suppose that you have different distributors then throughout the country, in Los Angeles, New Orleans, New York, and other places?

Mr. O'DONNELL. Yes, sir.

The CHAIRMAN. Do they have an association, a State organization, or a national organization?

Mr. O'DONNELL. There is a small national distributors organization and they have a representative in Chicago and they put out a monthly little bulletin. I believe their membership is very low. I think it is somewhere in the neighborhood of 45 to 50 members. In this bulletin



they exchange prices on new equipment. One of them may be loaded with this type of equipment and the other one is looking to buy this, and it was formed so they had some type of communication between each other.

Incidentally, in the main every one of these distributors I am talking about handle all types of coin machines.

The CHAIRMAN. You mean cigarette machines and things of that kind?

Mr. O'DONNELL. That is correct.

The CHAIRMAN. You are not concerned about that kind of coin machine in this proposed legislation, are you?

Mr. NELSON. No, sir.

Mr. O'DONNELL. No.

The CHAIRMAN. Are you concerned about shuffleboards?

Mr. NELSON. I think there is a problem. I think there is definitely an element of chance and I think shuffleboards in many instances are used in such a fashion that the player receives a prize. I think it is very common to have prizes for high score for the day or the week.

The CHAIRMAN. The Attorney General said in his statement that he would not seek the authority to prohibit the giving of prizes. He didn't consider that the evil that he sought to deal with here. You state in your statement:

We do not pretend that free plays are never converted to cash. \* \* \*

Mr. NELSON. Yes, that is true. They frequently are.

The CHAIRMAN. Are your machines designed and manufactured for that purpose as well as other purposes?

Mr. NELSON. Not to my understanding. It is just on any of these games they have a score and the proprietor can do whatever he would see fit to do in any of these games. It would be very true of a shuffle game, and in all due respect to the Attorney General and the study I am sure he has made of this, it seems to me, sir, that if he says that a prize would be all right, isn't a prize money or property? Wouldn't that fall strictly within the statutory definition?

The CHAIRMAN. That was what I was trying to get out of him.

Mr. NELSON. The other day, as I recall, he said, "Well, I don't think bingo equipment would be covered." Well, if I have any concept of the use of the English language bingo equipment would be covered, but are we to be in this nebulous area where he makes regulations and we then determine whether or not under his construction the particular device would be covered? It seems to me the standards that are being set would be the determination the Attorney General reaches, not the language of the statute.

The CHAIRMAN. Do you contend that machines with multiple-coin operations, which you mentioned a little while ago, come in the category of "amusement"?

Mr. NELSON. I think they do, sir. You have multiple coins on shuffle games and bowling games, too. You have multiple coins which give opportunity for several players to play or the same player could use all of the coin slots.

The CHAIRMAN. Yes; but when you put a coin in one of them you can't put another coin in that same slot until the game is played, can you?

Mr. NELSON. Each player can. I have been told that a game has a greater appeal if you give the player an opportunity to put two nickels in than, say, one dime. If the test is the number of coins, you would have a higher gross return in the national average if you built the machine to take a quarter, but commercially it has a greater appeal if you can start out playing with a nickel.

You don't have to go any further than the nickel. You can shoot the balls when the 5-cent coin is inserted, or if you want to you can put another nickel in. That is the option of the player. I assume that the player who is in a hurry would only put the 5 cents in.

Let's take the situation, say, at the airport with a few minutes to spare. If he was in a tavern and having a drink or two and has lots of time, he might put a good many nickels in.

The CHAIRMAN. You say that one of the machines demonstrated here the other day was your machine?

Mr. NELSON. Yes, sir.

The CHAIRMAN. The company that you represent?

Mr. NELSON. Yes, sir.

The CHAIRMAN. Even though it was made 5 years ago, I believe you said?

Mr. NELSON. Yes, that is true; it is about 5 years old.

The CHAIRMAN. Do you think that that machine should be legalized and included in the exempt category if this legislation were to be approved?

Mr. NELSON. Well, sir, it is legal in 27 States. It is legal in the State of Illinois. It is legal under the decision of the Court of Appeals in the District of Columbia. These are cases where evidence has been heard as to the element of skill and the use to which the games are put. This is an established legality, a legality that is in existence. This isn't something new.

The CHAIRMAN. But, Mr. Nelson, do you think by any strange stretch of the imagination that the legislatures of those States when these laws were adopted had any idea that there would be any such multiple-coin operation that was demonstrated here the other day?

Mr. NELSON. Yes, sir.

The CHAIRMAN. Do you think so?

Mr. NELSON. Yes, sir. Our State of Illinois reenacted an antigambling statute which was passed in June last year. It became effective January 3 of this year and the games that my client makes are perfectly legal under our statutes. You saw a demonstration with the coins. There was no effort to play the machine. That wasn't a true use to which the machine was put.

This gentleman could have played it after one coin, but it was just a series of deposits. A certain impression was created. That isn't the normal play. What fun would there be in just dropping the coin without pulling the plunger to see what score would be obtained?

The CHAIRMAN. That is the exact point that we wanted to get to finally. The demonstration indicated, and I want your explanation of it, that you could put innumerable dimes in there in order to run up your odds. Is that true?

Mr. NELSON. Yes, sir.

The CHAIRMAN. And when you get as many dimes as you want in there for the odds that you are trying to get for yourself, then you play the coin, is that true?



Mr. NELSON. You would have the option of doing it anywhere along the line.

The CHAIRMAN. Why outlaw the old slot machine then, if you are going to permit that kind of an electrically operated device to be operated?

Mr. NELSON. There wasn't any skill under the operation of the old slot machines, and these games are essentially games of skill. The player has something to say about the results that are obtained. One is completely mechanical.

The CHAIRMAN. Do you think that the player had anything to do with the odds that were run up on the machine when he put the dimes in there?

Mr. NELSON. The change in the score registered, no.

The CHAIRMAN. With dime after dime that he puts in there, nickels, quarters, or whatever it might be, do you think the player has anything at all to do with the odds that run up on it?

Mr. O'DONNELL. No.

The CHAIRMAN. Of course, he does not. Then how can you contend that this is primarily a type of device that would be used for amusement?

Mr. NELSON. Well, I feel it is within the control of the player and he can play it after one coin or two coins, as he sees fit, and I think it would be a rare person who would put an endless number of coins in without first playing it. The opportunity for advancing the score register and so on, I think is one of the appeal features of the game.

The CHAIRMAN. Yes, just like it is in a slot machine, the appeal features of the game.

Mr. NELSON. But the player has to show some skill and has to have some control over the operation if he is going to get a high score. You asked me, sir, about whether any of the legislatures feel that as of the present time. They do under these statutory enactments, and the case I mentioned in Illinois was a reaffirmation of the State statute, and there was proof before the court by witnesses that John Jones could play the game much more skillfully than Tom Smith, the people who were accustomed to playing it. Our court held that that was a game of skill.

The CHAIRMAN. Mr. Rogers?

Mr. ROGERS of Florida. Now, from the questions I asked previously I don't understand this matter. I thought you said that you could set your machines to compensate for skill so that, in effect, you either make the game harder or less difficult.

Mr. NELSON. But, Mr. Rogers, you must still be able to propel the ball on to the playing surface and you must use your judgment. You must calibrate that in such a fashion. The game is regulated to the extent that it cannot be an endless number of free plays or that no free plays would be obtained, but one man could score much better than another.

Mr. ROGERS of Florida. You set the odds for the house, in effect, do you not?

Mr. NELSON. It is something like a goal, of course. You trap it. You cannot be too easy or too hard, but the one man will score much better than the other, and that has been the testimony.

Mr. ROGERS of Florida. Isn't it also something in the degree that you can make these machines difficult or not? It is something like a slot machine too, because they can set a payoff at a certain number of games and so forth, so you must have some control there if you make the games harder or less difficult.

Mr. NELSON. Yes, sir, there is that control, there is that regulation, but there is still a difference between what the two players will do.

Mr. ROGERS of Florida. That is getting to a pretty thin difference, I think.

The CHAIRMAN. It appears to me that what you are asking this committee to do is to give its approval to the operation of any kind of mechanical device so long as any element of skill might come into it to make it an amusement game and without any consideration to the effect it would have on just what the Attorney General seeks to prohibit.

I just don't understand that position. If you want to operate them for amusement purposes, that is one thing, but then to define something as a game of amusement when evidently the amusement angle is very thin and the element of chance is the major element, as Mr. Rogers has said, is quite difficult for me to understand.

Mr. NELSON. There is much divided authority on it.

The CHAIRMAN. I am trying my best to find out just what the intent of the manufacturers is in this legislation as I did with the Attorney General when I was trying to find out just what he was seeking. Now, from what you have explained here as to what you want to do, I cannot help but think that there is a lot of merit in what the Attorney General seeks to do.

I know how people take advantage of things and I think the organization that you represent is in every way seeking to legitimately expand its own business and stay in business. But I cannot believe that you would want to continue in something that lends itself to the kind of conditions described by the Attorney General.

If there is no organized operation in this field, do you have any doubt that such operation would not develop if this kind of a situation would be permitted?

Mr. NELSON. Mr. Chairman, I again submit I do not know of any organized activity in this field, and I have seen nothing in the record, sir.

The CHAIRMAN. How much does that machine cost?

Mr. NELSON. I am sorry. That machine cost \$525 to the distributor, or when it was sold new.

Mr. O'DONNELL. And they resell them for whatever markup they can get.

The CHAIRMAN. You said that was 5 years old. What types of similar devices are being manufactured by your company now?

Mr. O'DONNELL. Presently the price is \$765 for the same style machine.

The CHAIRMAN. With all that drum operation in it?

Mr. O'DONNELL. Yes, sir.

The CHAIRMAN. Multiple coins?

Mr. O'DONNELL. Yes, sir.

The CHAIRMAN. How many coins can you put in it?

Mr. O'DONNELL. Mr. Chairman, that would depend on the cash box.



The CHAIRMAN. In other words, you can put all the coins in it until it is full?

Mr. O'DONNELL. That is right.

The CHAIRMAN. And there is no way in the world that you can, as a manufacturer, prevent that from being used as a very great gambling device or operation?

Mr. O'DONNELL. No, sir; there is no way. I don't mean to sound smart aleck here, but there are many knives used to kill people. Well, how are you going to outlaw the manufacture of knives? You are talking about the end use of a product.

The CHAIRMAN. Mr. O'Donnell, that is a very, very naive argument insofar as I am concerned, with the kind of machines you have here lending themselves only for the purpose of taking people's money. This so-called amusement thing has no purpose except taking people's money. We had a difficult time working out the legislation back in 1951, on the old slot machine bill, without interfering with any legitimate operation in the field of amusement.

This, as Mr. Rogers said a moment ago, gets down to a very fine point. I don't know whether we will be able to work it out or not.

Any further questions? Thank you very much. I appreciate your testimony here and the information which you gave to us about this operation.

Mr. NELSON. Thank you, sir.

The CHAIRMAN. Mr. Melvan M. Jacobs. Mr. Jacobs, will you identify yourself?

**STATEMENT OF MELVAN M. JACOBS, REPRESENTING JENNINGS & CO., DIVISION OF HERSHEY MANUFACTURING CO., CHICAGO**

Mr. JACOBS. Yes, sir. My name is Melvan M. Jacobs. I am an attorney in Chicago, Ill., and I represent the Jennings Manufacturing Co., which is the principle manufacturer of slot machines in the city of Chicago.

I wish to thank the chairman and the members of the committee for the privilege afforded me to express our views on certain aspects of the bills now before the committee and request permission to file a copy of our memorandum for the record.

The CHAIRMAN. You may do so at this point.

(The memorandum referred to above follows herewith:)

**STATEMENT OF MELVAN M. JACOBS, REPRESENTING JENNINGS & Co., DIVISION OF HERSHEY MANUFACTURING Co.**

Melvan M. Jacobs, of the firm of Quinn, Jacobs, Barry & Latchford, 231 South La Salle Street, Chicago, Ill., attorneys for Hershey Manufacturing Co., an Illinois corporation, represents on behalf of the company that the company, which through its Jennings & Co. Division is a major manufacturer of so-called slot machines, is most sincerely in favor of, and urges a favorable committee report as to those parts of the proposed amendments to the above-mentioned act, commonly referred to as the Johnson Act, which would enlarge upon and better define the persons who would be required to register and to maintain and file appropriate records in accordance with this act. However, the company strongly urges that that part of the proposed amendments to the act, providing for an interdiction to extinguish rather than to regulate any segment of foreign commerce, be seriously considered by the committee in the light of its possible effect upon the industry, the employment conditions of the various small businesses engaged in this industry, and the trade balances of the United States.

Jennings & Co. was incorporated under the laws of the State of Illinois on March 19, 1954, and it purchased the assets of O. D. Jennings & Co. from the estate of the late O. D. Jennings. O. D. Jennings & Co. had manufactured slot machines in the city of Chicago from 1906 until its acquisition by Jennings & Co. On May 15, 1957, Jennings & Co. was merged into Hershey Manufacturing Co., an Illinois corporation, which had been incorporated under the laws of the State of Illinois on April 27, 1939. Since that time, Hershey Manufacturing Co. has been engaged in governmental subcontract work, manufacture of vending machines, and photoflash equipment. However, over 80 percent of the business of the company is done through its Jennings & Co. Division which manufactures slot machines. Therefore, this manufacture is the company's principal work.

In the last year the company has employed between 75 and 124 men, with an annual payroll for the year 1960 of \$308,120. In the year 1960 the company's gross sales of slot machines were \$961,226, of which over \$900,000 in sales was to 15 foreign countries, including Turkey, Germany, France, Italy, Sweden, England, Denmark, Spain, Canada, Aruba, Dominican Republic, Haiti, Iceland, Greenland, and Nova Scotia.

In the year 1960 gross sales to the United Kingdom were \$482,493, which is the result of the legalization of the use of these machines in the United Kingdom. It is anticipated by all those in the industry that sales to the United Kingdom, due to its adoption of a public policy in favor of use and regulation of these devices, will greatly exceed the 1960 shipments, since the demand in that country is exceeding the manufacturing facilities available in the United States. In volume 623, No. 110, Hansard's reports for May 11, 1960, the Joint Under Secretary of State for the Home Government, Mr. Dennis Vosper, in quoting from a statement made by the Home Secretary, stated on page 428:

"We hope that the bill—with the improvements that will be made to it during its passage through Parliament—will provide reasonable freedom for people who wish to bet or to play games for money to do so, while, at the same time, retaining sufficient safeguards to act as deterrents against their being led into excess."

These comments on the bill to legalize slot machines in the United Kingdom stress that the public policy of the United Kingdom is not prohibition against gambling, but rather they have felt that control with adequate safeguards is their prime objective. As may be seen from this example, shipments into the United Kingdom from the United States are, and will be, in legitimate foreign commerce in accordance with the public policy of the country to which the devices are shipped. We do not feel, therefore, that a prohibition of shipment in foreign commerce will do other than encourage unemployment and an unfavorable European balance of trade, the result of which will culminate in putting not only the small businesses engaged in the manufacture of slot machines out of business, but affecting grievously the foundries and other suppliers of these manufacturers.

There are, to our knowledge, five companies engaged in the manufacture of slot machines in the United States at this time. They are as set forth below, with their approximate comparative percentages of sales:

Jennings & Co., a division of Hershey Manufacturing Co., Chicago, Ill.....	40
Mills Bell-O-Matic Corp., Chicago, Ill., and Reno, Nev.....	35
Ace Manufacturing Co., Maryland.....	15
Buckley Manufacturing Co., Chicago, Ill.....	5
Las Vegas Coin Machine Co., Las Vegas, Nev.....	5

In connection with the enforcement of the Johnson Act and local gambling statutes, both the Federal Government and the State authorities have investigated the background of the owners and employees of Hershey Manufacturing Co., and these reports have shown that all persons connected with the company have the highest personal reputation, with no derogatory material about them or any connections they may have.

For these reasons and for the reasons of attempting to keep a balance of favorable foreign trade, the maintenance of U.S. gold reserves, and to prevent local unemployment, we believe that there should not be a prohibition on foreign commerce shipments. The revenue of the United States also would suffer from taxes lost on individual and corporate incomes, and the policy of the United States would suffer by extinguishing a small business which is shipping only to places where the devices in question have a lawful use.



This year the Supreme Court of the State of Illinois, in the case of *Hershey v. Adamowski*, No. 35831, rendered an opinion in which it stated that the manufacture of slot machines in the State of Illinois for shipment in compliance with the Johnson Act in interstate or foreign commerce was legal in this State. The court, in its opinion, emphasized that the machines in question have a potential for lawful use if manufactured on order for shipment into the State where gambling is legal, Nevada, and in foreign commerce, as the machines, themselves, are legal outside of this country. The machines in question were determined not to be contraband under this "potential for lawful use" doctrine.

We feel that the Johnson Act, as it may be from time to time amended, should take into account this "potential for lawful use" doctrine and regulate the shipments to insure that the devices are shipped to legal localities, but we do not feel that Congress should prevent the shipment of any article of commerce for a legal usage, as such a prohibition could have no effect other than a detrimental effect on trade, employment, and the like, as set forth in this memorandum.

Allowing these companies to ship in foreign commerce could have no effect on the public policy of the United States, as the stringent provisions of the Johnson Act prohibit any shipment into the United States with both the customs department and the Attorney General's Office acting as safeguards against reentering.

The Hershey Co. keeps adequate records and is willing to make such reports, keep such records, and allow such inspections as may be deemed desirable to enforce the provisions of the present law and any amendments that Congress may make.

In conclusion, we would like to state that while we believe that the objectives of the bill are laudable, they can be fully attained without destroying a substantial, legitimate small business concern engaged in foreign commerce.

Mr. JACOBS. I intend only, Mr. Chairman, to summarize briefly what our memorandum contains. At the outset I want to make it clear that we not only do not object to the bills now before the committee, but to the extent that they refer to the proposals for enlarging upon and better defining the persons who would be required to register and to maintain and file appropriate records, we heartily endorse the bills.

We also endorse the objective to be achieved by the Attorney General. We make no comment whatever with regard to the problems that confront the prior witness although we recognize the problems that are inherent in the determination of whether certain machines are in fact gambling or amusement devices. The machine manufactured by our company is clearly a gambling device. It is a slot machine that pays off in money usually and sometimes property.

As now proposed, H.R. 3024, while providing for more effective and broader regulations of sales in interstate commerce, still contains the provisions for absolutely forbidding rather than regulating, sales in foreign commerce. H.R. 8410 and Senate bill 1658 have both omitted this prohibition against foreign commerce. H.R. 3024 continues to include that prohibition.

The Attorney General before this committee on January 16, and Mr. Cramer, the sponsor of your H.R. 3024, have both indicated their willingness to delete that portion from H.R. 3024.

Commenting briefly on the question raised by Mr. Cramer that there might be some ambiguity in the bill even though the foreign commerce portion was deleted as to whether it required the same type of registration and recordkeeping for manufacturers who do ship in foreign commerce.

We have taken the opportunity to further review that provision of the bill, and it is our opinion that the bill adequately covers the proposition, that even though sales in foreign commerce are permissive, the registration requirements of S. 1658, and H.R. 3024, and the other

accompanying bills, would require a shipper in foreign commerce to register and keep appropriate records and we heartily endorse that requirement.

The proposed export bar still remaining in H.R. 3024 in our opinion bears no reasonable relationship to the furtherance of the stated proposed legislation, which is to effect better regulation and control over interstate commerce.

H.R. 3024, as I have stated, does in fact contain comprehensive regulatory provisions effecting manufacturers having express application to their activities in either interstate or foreign commerce. These regulatory features are, as opposed to an export bar, in complete harmony with the declared objectives.

Apart from those considerations, we believe that the abstract effects of the proposed legislation as pertains exclusively to foreign commerce, insofar as it would forbid shipments in foreign commerce, are worthy of further consideration by the committee.

First of all, export sales are directed to foreign countries where, as in England, the subject devices, namely, the slot machines, have entry and acceptance as a matter of declared public policy. In the United States the only State that we recognize as having accepted public policy in the use of a slot machine for lawful use is the State of Nevada, and that is the only State to which we ship slot machines.

The Johnson Act was designed primarily to prevent the transportation of gambling devices into a State or possession of the United States whose declared public policy prohibits gambling. Yet, at the same time, the act both in its present form and as it is now proposed to be amended, recognizes the right of the State, such as Nevada has done, to adopt and declare a contrary policy.

We do not comprehend the logic behind the absolute ban on foreign commerce exports by an American manufacturer, such as exports to England or Monte Carlo, or France, or any other country that by their own indigenous law recognizes and gives lawful use to a slot machine or other gambling devices.

I would like to take only a moment more, sir, to point out that in our opinion, aside from the apparent contradiction of policy within the bills, the significant national effects of the proposed prohibition regarding foreign commerce lies more in the field of economics than in criminology. I don't think that it is the intent of our legislature to legislate with respect to the morals of foreign countries.

There are a very substantial number of people engaged locally in manufacturing this type of equipment. The revenue would suffer a very substantial loss on corporate income from what otherwise are wholly legitimate businesses operated by legitimate businessmen. This fact has been confirmed many times by the Federal Bureau of Investigation, with whom appropriate records of registration are filed.

Industry sales for export during the past year was well in excess of \$6 million and it is expected that with the advent of the new law in England, which authorizes and legitimatizes the use of all types of slot machines and other gambling devices, the export amount will be greatly increased.

This I think is also of great significance in that our national outflow of dollars abroad for imports, foreign aid, military bases, tourist travel, et cetera, can be brought and kept in balance only by the



preservation and increase of export sales, a matter which I know is now before Congress for serious consideration.

If the proposed amendment to bar sales in interstate commerce were passed, it would completely eliminate several American manufacturers from the world market.

With respect to the company that I represent, a very small percentage of its total sales are made in the United States, certainly less than 10 percent. I think this is applicable substantially to all manufacturers of slot machines in the light of the Johnson Act.

In conclusion, it is our opinion that any legislation having the effect of eliminating American exporters and cutting off a substantial inflow of dollars, is inimical to our national interest in maintaining our gold reserves and the continued soundness of the American dollar.

I most sincerely believe that these considerations outweigh any speculative benefits of the proposed export ban, especially as already proposed by this legislation regulatory measures will apply alike to both interstate and foreign commerce.

The CHAIRMAN. Does that complete your statement?

Mr. JACOBS. Yes, sir.

The CHAIRMAN. Mr. Moulder?

Mr. MOULDER. No questions.

The CHAIRMAN. Mr. Nelsen?

Mr. NELSEN. No questions.

The CHAIRMAN. Mr. Rogers?

Mr. ROGERS of Florida. Yes, Mr. Chairman. You would have no objection if there were a ban placed on imports in this country.

Mr. JACOBS. No, we would welcome it, sir.

Mr. ROGERS of Florida. Thank you.

The CHAIRMAN. Thank you very much, Mr. Jacobs.

Mr. Irvin Goldner.

Mr. Goldner, will you identify yourself for the record please.

**STATEMENT OF IRVIN GOLDNER, PRESIDENT, AMUSEMENT  
MACHINE OPERATORS' ASSOCIATION OF GREATER BALTIMORE,  
CHASE VENDING SERVICE, BALTIMORE, MD.**

Mr. GOLDNER. My name is Irvin Goldner of Baltimore, Md. I am here in the capacity as the head of the Chase Vending Service, and also as president of the Amusement Machine Operators' Association of Greater Baltimore.

The CHAIRMAN. Very well.

Mr. GOLDNER. May I proceed, Mr. Chairman.

The CHAIRMAN. You may proceed, Mr. Goldner.

Mr. GOLDNER. There are 90 to 100 operators in Baltimore City and Baltimore County, Md., and of these about 50 are association members. All members, without exception are residents of either Baltimore City or Baltimore County of long standing. Most of them were born and raised in the Baltimore area.

By the usual operating practice of placing equipment on a share-the-earnings basis with retail establishments—small businesses, restaurants, taverns, recreation centers, and the like—these firms serve approximately 2,700 locations. It is readily apparent that no one operator is large or dominates our business. The average would be about 30 locations.

Coin machines, of which the pinball games threatened by these bills constitute a substantial proportion, are licensed and taxed in many sections of Maryland. Each county, practically speaking, provides its own licensing fees. In Baltimore City, licenses produce approximately \$300,000 to \$350,000 annually. In Baltimore County such fees produce approximately \$100,000 annually. The fees collected by other counties are in many instances even more substantial, particularly in Charles, St. Marys, Anne Arundel, and Calvert Counties where cash payouts are legal. These figures do not include the additional substantial tax revenues, local and Federal, from the various property, excise, and income levies upon the coin machine industry.

The people I have defined as making up the various segments of our industry are the same normal variety of average small businessmen and good citizens as comprise the body of any other retail and service industries. They are most definitely not criminals or national crime syndicate members.

Mr. Chairman, if I may state at this point, you quoted a few moments ago the figure of \$250 million. I am sure that inadvertently you were in error because, reading on page 8 of Mr. King's statement where he estimated these figures, you will note that he says that the gross would be \$260 million for a 5-year period. Suddenly the figure has shrunk to \$50 million annually, and when you take into consideration the fact it is the normal practice in our business everywhere, I am sure, certainly in our area, that half the proceeds are shared with the location, that is approximately \$25 million left for us.

The CHAIRMAN. Mr. Goldner, I want the record to clearly reflect what I intended to say. I was quoting the Attorney General and what the Attorney General said. I was not quoting what Mr. King said or the competitors in this business.

Mr. GOLDNER. Yes, sir.

The CHAIRMAN. I am not going to try to resolve the differences between you people in the business.

Mr. GOLDNER. I am sorry, Mr. Chairman. I assumed you meant Mr. King. The whole point of mentioning this was to indicate in my opinion at least that this is not big business and certainly not organized crime or racketeering, but that this was essentially an industry of small businessmen. Nevertheless, their welfare is seriously threatened by this proposed Federal prohibition. Our interstate manufacturing sources for the necessary constant flow of new equipment would be destroyed regardless of what Maryland statutes provide. Our existing right to interstate sale of our used equipment and the necessary replenishment of the capital investment so represented would also be destroyed.

As I stated, coin machines are licensed and taxed in many Maryland sections. Basically, the Maryland method is a strictly "home rule" process, conforming to the varied local preferences of the several communities. This is done by separate legislative authorizations, per county, by our house of delegates, each embodying the exact preference of the sponsoring county. At present I know of no Maryland county out of a total of 23 that is not collecting some license fee for certain types of equipment.

The proposed S. 1658 amendment would impose a uniform Federal standard that would inevitably conflict with the varied local Mary-



land regulations and authorized local preferences. The proposed definition clause " \* \* \* may become entitled to receive as the result of an element of chance \* \* \*" is particularly in point in this respect. It is so broad it might well be applied to almost any coin-operated amusement device.

I urge, therefore, that either the existing Public Law 906 of 1951 be allowed to remain unchanged, or, if an amendment is adopted, the proposed definition in S. 1658 be changed by some practicable, sensible proviso that will clearly permit the use and interstate shipment of amusement games wherein skill and chance may both exist.

The CHAIRMAN. Thank you very much, Mr. Goldner.

Mr. Williams, any questions?

Mr. WILLIAMS. No, I have no questions.

The CHAIRMAN. Mr. Nelsen.

Mr. NELSEN. No questions.

The CHAIRMAN. Mr. Moulder.

Mr. MOULDER. Would the Attorney General's authority to make rules and regulations in passing upon whether or not the coin-operated device is gambling, within the provisions of the bill, protect you?

Mr. GOLDNER. I am sorry. I don't believe I got the question.

Mr. MOULDER. As I understand it, the Attorney General would have the authority to make rules and regulations and pass upon, in his judgment, whether or not the mechanical device is a gambling device. I think that is his purpose.

Mr. GOLDNER. You mean would that affect my business?

Mr. MOULDER. So as to protect the legitimate coin-operated machines.

Mr. GOLDNER. I am very frank to admit, Mr. Congressman, since I am not an attorney, I cannot understand all the legal implications, but from the various witnesses that were here and the various questions that were asked, including the Honorable Attorney General, I am thoroughly confused. I do not know what my responsibility is at this point if this bill were passed.

Mr. MOULDER. That is all, Mr. Chairman.

The CHAIRMAN. Governor Thomson?

Mr. THOMSON. No questions.

The CHAIRMAN. What Mr. Moulder had in mind was subparagraph (j) on page 6.

Mr. GOLDNER. Yes, sir; I see that.

The CHAIRMAN. I observe that it is included in section 3 of the bill which amends section 3 of the Johnson Act, and this has to do with registration. I assume then that this provision of the bill which reads:

The Attorney General is authorized and directed to make and enforce such regulations as may in his judgment be necessary to carry out the purposes of this Act \* \* \*

would be applicable to the act itself. I would think the Attorney General would have authority to issue such regulations as in his judgment would be necessary within the provisions of the act itself, including the revised definition of the term "gambling device" in section 1 of the bill, which is the crux of this whole bill.

Mr. GOLDNER. Mr. Chairman, part of our concern is just because of that point. I recall that earlier in the testimony one of the Congress-

men asked whether this amendment would apply to existing equipment and whether it could be repaired, and I recall, as the questioning was made, that the issue was never clear cut. I mean insofar as the way the bill is written. Remember, Mr. Chairman, I am speaking without any legal background.

The CHAIRMAN. I understand it would not apply to any existing equipment, but if you repaired existing equipment with any parts which have been transported in commerce for that purpose, then, it would become subject to this law.

Mr. GOLDNER. Mr. Chairman, but again, without disrespect, if I may quote you particularly, you raised a point about what if the feeling were changed a month from now, or 6 months from now or a year from now or if we had a new Attorney General. I believe that is the way you put it.

The CHAIRMAN. Yes, but I was talking about purely what was an amusement and what was a gambling machine.

Mr. GOLDNER. Yes, I am speaking about amusement machines. I operate amusement machines. I do not buy or sell. I simply operate.

The CHAIRMAN. You simply operate?

Mr. GOLDNER. Yes, sir.

The CHAIRMAN. In Maryland?

Mr. GOLDNER. Yes, sir; in the Baltimore area only. I do not operate in any of the legal counties.

The CHAIRMAN. Where do you get your machines?

Mr. GOLDNER. In Baltimore, from a distributor.

The CHAIRMAN. You operate machines only made in Baltimore?

Mr. GOLDNER. Oh, no; my machines are all made in Chicago.

The CHAIRMAN. That is what I was asking about. Do you think that such machines as were described here, all of the multiple coin-operated type with electrical drums and capable of running up the odds to any degree, would be the type of machines that are referred to as amusement machines?

Mr. GOLDNER. Yes, sir; we refer to those as amusement machines as long as they give nothing but free plays.

The CHAIRMAN. Suppose they pay off. Then what happens?

Mr. GOLDNER. That is illegal in the State of Maryland.

The CHAIRMAN. Is that being done?

Mr. GOLDNER. If it is it must be very rare because there have been very few convictions.

The CHAIRMAN. Then this kind of an operation would not be covered in this legislation, would it?

Mr. GOLDNER. I don't believe I understand that, sir.

The CHAIRMAN. The only thing that can be covered in this legislation is any machine that will pay off either in money or property or that would entitle somebody to be paid in money or property.

Mr. GOLDNER. I don't believe I understand it that way.

The CHAIRMAN. That is what it says.

Mr. GOLDNER. No, sir; it says that the Attorney General shall determine what is a gambling device, or someone.

The CHAIRMAN. I do not agree with that. The Attorney General is given authority to make regulations within the language of the act. He cannot go beyond the language of the act.



Mr. GOLDNER. Very well. Then I am confused as to who is going to make the determination as to whether or not it is a gambling device. That is the reason for our concern.

The CHAIRMAN. Thank you very much.

Mr. GOLDNER. Thank you.

The CHAIRMAN. Mr. Belser?

STATEMENT OF IRVINE F. BELSER, JR., ESQ., COUNSEL FOR PEACH  
STATE TRADING CO., COLUMBIA, S.C.

Mr. BELSER. Mr. Chairman and members of the committee, my name is Irvine F. Belser, Jr. I am a lawyer actively engaged in private practice in Columbia, S.C., and I might say simply by way of qualification of the witness that I am a graduate of Yale University and of Harvard Law School.

The CHAIRMAN. A very good combination.

Mr. BELSER. I also served as first assistant U.S. attorney in the eastern district of South Carolina for a number of years and have some practical working knowledge of the matters that are under consideration.

I appear here today on behalf of the Peach State Trading Co. of Macon, Ga., which is a wholesaler or distributor of coin-operated amusement devices, doing business both in Georgia and in South Carolina. My client sells to people known as operators in the trade a wide variety of these devices, both the kind which the Attorney General apparently seeks to prohibit and also the so-called amusement type, as well as a large number of other kinds, bowling alleys, shuffle games, guns, pool tables, jukeboxes, and so on. My client does not control or direct in any way what is done with the machine, of course, once it is sold to the operator.

Let me make it perfectly clear that as a lawyer and as a citizen interested in good government, I concur in the overall objectives of the proposed bill. My objections go to the fact that I feel that the Attorney General, insofar as the language has been provided so far, is attempting to use a blunderbuss to kill what is in South Carolina only a mouse. I feel first of all, and looking for the moment only from the standpoint of the State of South Carolina, which, of course, I am principally familiar with, the proposed legislation is unnecessary.

The Attorney General, as I understood his testimony, is apparently directing the present bills against organized crime and racketeering, and I am perfectly honest and fair in saying to this committee that I know of no organized crime and racketeering in South Carolina. Whether or not we lack the concentration of wealth or population that produced that kind of organization or what, I don't know. I don't mean to imply that South Carolinians are all angels, because obviously we are not. We have crime in South Carolina, but it is not on an organized, syndicated basis. To that extent the purpose for which the bill is intended does not exist in South Carolina. Furthermore, we have no large gambling profits. As I understood some of the testimony of the proponents of the bill, they are not concerned as much with gambling as such, which is legal in certain parts of the country, as with the byproducts of what they conceive to be large profits from gambling, which, of course, in turn are used to buy off public officials, to encourage prostitution, narcotics, and so on.

I can say without fear of contradiction that there are not any large gambling profits in South Carolina. Except for "coin-operated non-payout pintables with free play feature," which is the language that the statute uses, all other types of gambling, parimutuel betting at racetracks, and so on, are illegal in South Carolina and gambling is not a major industry or major problem in South Carolina, and there are no gambling profits with which to buy public officials or to organize any other kind of crime.

My client's customers are not criminal or big-time gamblers and they do not have any connection with organized crime. They are simply ordinary small businessmen owning a number of machines which they place in various locations. I might point out to the committee that in connection with my client's business approximately 95 percent of the machines which my client sells to these operators are financed by banks, with a 25-percent downpayment, and the balance payable over a number of months. They are not paid for in cash. The people who buy these things do not have the kind of money that is necessary to pay cash. They are small businessmen who have to go to the bank in order to borrow the money on an ordinary installment payment basis with which to buy their machines. That situation hardly seems to me to smack of crooks or hoodlums or people of that sort who deal in cash and rarely have credit acceptable to banks. The South Carolina National Bank in Columbia, which is the largest bank in the State, the bank with which my client finances most of this paper in South Carolina, has indicated that these accounts are among the most satisfactory they have with defaults very rare.

I would also like to point out that the kind of money involved in South Carolina does not approach or approximate the kind of figures that the Attorney General was talking about, as I understood his testimony, and, Mr. Chairman, as I recall what the Attorney General said, it was "hundreds of millions of dollars." Obviously he was talking on a national basis and not with reference to any one State. Mr. Rufus King, who incidentally is a friend of mine, computed it up to \$260 million. But South Carolina does not deal in any such sums. The average take for each location would not run more than \$50 a week for all the machines in the place, and that, of course, has to be divided between the operator and the location owner. Out of his share the operator has to pay for the machine and has to pay whatever licenses or taxes are involved in it. He has to service them each week, and, as you can see, they are fairly complicated machines that require a certain amount of servicing, spare parts, lubricants, lights, and so on. He has to absorb all the ordinary expenses of doing business.

As I conceive the testimony of Mr. Rufus King and the Attorney General, they were talking in terms of gross, which is something that sometimes people tend to do without realizing that every person in business has to pay the expenses of doing business. If everybody could put the gross in his pocket, we would all be rich. It is what you have left after paying the expenses of doing business that you have available to buy public officials with, or whatever else is concerned. So as far as South Carolina is concerned, we don't have organized crime, and we don't have any large gambling profits, so to that extent in South Carolina this legislation is unnecessary. Of



course, I can't speak for the rest of the country, and that, of course, is a concern of this committee.

Looking at the bill, however, which of course is a concern of the committee, from the standpoint of a lawyer, I think that the bills contain several serious flaws. In the first place, as has been brought out by the questioning of some of the members of the committee, the proposed language of the bills attempts to cover in generic terms all machines or mechanical devices which are "designed and manufactured primarily for use in connection with gambling," and which meets certain other tests concerning the presence of an element of chance or entitlement to receipt of money or property. In other words, assuming that these other elements are present, which I feel would be present in the type of machines that we are concerned with, the primary test becomes the manufacturer's intent. Of course, intent is a thing that resides in the mind of the person, and who is going to determine it or how that intent is going to be determined is not spelled out in the act.

Mr. Rufus King asked you not to try to do it for fear that these nefarious manufacturers or gamblers would think up some new device or new machines to get around the language of the statute. I find that approach and the lack of definiteness in the bill objectionable. It is going to leave the people who are concerned in the industry, the manufacturers, the distributors, the operators, the location owners, uncertain for a considerable period of time, with their businesses, in fact, even their liberty, at stake, uncertain as to what they can do and what they cannot do.

The Attorney General concedes that he does not propose to apply this legislation to a number of devices which would come or appear to come within the language presently used in this bill. I find that the most insidious feature of the whole matter. A criminal statute, as Mr. Dingell has stated, has to be sufficiently clear and specific as to advise the person who is either to do or not to do the thing concerned as to what is legal and what is illegal. The Attorney General is here saying that even though the words of this statute might seem to apply to the wheel out of which you take the bingo ball, he is not going to apply it to that because, as he conceives it, that has no connection with organized crime and racketeering, and the money involved is small. I find that bad legislation, to leave that type of determination to the administrative agency that is supposed to be enforcing it.

Mr. Dingell brought out very clearly and well, I thought, in the hearing yesterday that that matter of legislative intent is one of the slipperiest things in the practice of law. The ordinary prosecuting lawyer, and the defendant's lawyer who is asked to defend a case in South Carolina, in Louisiana, in Mississippi, or wherever else he may be, simply does not have available to him the records of these hearings. It would take a major undertaking on the part of the ordinary lawyer in South Carolina to find out what went on in these congressional hearings.

As a matter of fact, legislative intent is difficult at best because you have hearings before the Senate, you have hearings before the House, and you have speeches on the floor of the House and of the Senate, so that when you get through a mass of several hundreds of pages you don't know what the legislative intent was, and you cannot depend

upon what the Attorney General in good faith may have said before this committee. His ideas may change or conditions may change. The language of the statute itself has to define what is legal and what is illegal as best that words can define it, and not leave it to the interpretation of some administrative agency.

Looking at it again from the standpoint of South Carolina, the legislation in its present form, as the words now exist before this committee, under the guise of regulating interstate commerce attempts to invade the rights of the States to determine for themselves under their police power what is legal and what is illegal, and I feel that it is of doubtful constitutionality on that point. In the case of South Carolina the words of Senate bill 1658, as I understood them to be interpreted by the Attorney General, and Mr. Rufus King, one of the principal proponents of the legislation, would declare illegal some types of "nonpayout pin tables with free play feature" and prohibit their transportation into South Carolina even though under South Carolina law those devices are legal, and regardless of the number of free plays that they may award, whether 1, 2, or 999.

In South Carolina, prior to 1949, pin table machines which gave a variable number of free plays, even if coupled with merchandise of uniform value, such as a piece of chewing gum, were consistently held to be illegal, and I have cited on page 7 of the statement which I have handed up a number of cases along those lines.

In the case of *Holiday v. The Governor of the State of South Carolina*, an operator in Greenville brought an action to attempt to enjoin the enforcement of this antigambling statute, in his case on the ground that it constituted an unlawful taking of private property without due process of law, and the State won the case. The lower district court, Judge Wyche, U.S. district judge, denied the injunction and that was affirmed by the Fourth Circuit Court of Appeals and ultimately by the U.S. Supreme Court. So the law by that time became perfectly clear that pin tables with no payout but with free plays were illegal under South Carolina law as gambling devices where there was any variation in the free plays. Following that the General Assembly of South Carolina in 1949 enacted a specific statute amending the previous statutes so as to except coin operated nonpayout pin tables with free pay feature, and with no distinction as to the number of free plays, and certain other automatic weighing, vending, music machines, and so on that we are not concerned with here. I have cited in my statement the section of the code, and I have the book here in case the committee would be interested more in it.

Consequently under the present law in South Carolina nonpayout pin tables are legal even though they provide free play features, and the law does not distinguish between types of pin tables offering higher or larger numbers of free plays as the Attorney General and Mr. Rufus King undertook to do by way of interpretation of the present legislation.

I might also point out that under South Carolina law such machines which are legal are also licensed by the South Carolina Tax Commission and that the legislation relating to the amount of the tax has been amended several times since 1949, including as recently as 1959 and 1960, each time to increase the amount of the tax required. This indicates that the matter of the legality of these machines has not



been simply overlooked by the legislature and some old bill allowed to remain law. The matter has been specifically reconsidered from time to time and quite recently, and deliberately as a matter of legislative choice allowed to remain in effect in South Carolina.

The Attorney General has interpreted the statute as not authorizing the payment of cash to people who win free plays. In other words, under the law as interpreted in South Carolina by the State attorney general the person who wins a free play or 999 free plays can't go to the location owner and get his money back, and I have an opinion of the Honorable T. C. Callison, who at that time was the attorney general, along those lines. So consequently it is considered illegal and a violation of the statute to trade in free plays for cash or merchandise.

Where such instances are detected, the location owners or the other people responsible are prosecuted and the machines confiscated, and there are such prosecutions in South Carolina. I know of a pending prosecution in Anderson County in South Carolina right now. So as a practical matter we have a law, we have a general antigambling law in South Carolina which does away with parimutuel betting, any kind of racetracks, dog tracks, or anything of that sort, and we have a practicable and workable and enforceable rule which permits these machines where they don't pay out in money, even though they provide free plays, and people who do pay off are prosecuted.

In connection with some of the questions which were asked this morning, I would like to make this point: That in order to derive any considerable amount of revenue from gambling or from trading in free plays for money, a lot of people have to do it and a lot of people have to know about it. A lot of people have to be customers of these locations or of these machines, and if a lot of people know about it, the police, the local law enforcement people, if they have a brain in their head, know it too, and they can stop it, and I am perfectly sincere when I tell this committee that we do not have any problem in South Carolina in that regard. There are people who try to occasionally, but in the great majority of cases the people who use these machines simply play them for amusement during some few idle moments that they may have in the drugstore or the bus station, or the beer hall, or wherever the place may be, and there is not any large-scale gambling. I do not mean to say that there never is, but there is no major problem and there are no large amounts of money involved.

The report of the Senate committee indicates that Byron White, Deputy Attorney General, suggested in a letter dated July 25, 1961, to Senator Eastland, that a proviso might be added to the bill so as not to prohibit the transportation of—

any device commonly known as a pinball machine into any State in which the transported device is specifically enumerated as lawful in a statute of that State.

Of course, this amendment was not adopted by the Senate in its passage of the bill and is, consequently, not actually before this committee at the moment, except to the extent you want to go into legislative history in the Senate. In view of the legislative history of the statutes in South Carolina, I would consider that the amendment proposed by Byron White would authorize the transportation of these machines into South Carolina because we do have a statute, passed

in 1949, which says that the general antigambling statute shall not apply to these, so that I would think that probably that would protect us in South Carolina. However, if you want to get real technical about it, the statute to which I refer does not specifically enumerate it as lawful. What it does is specifically enumerate it as not unlawful, which of course is substantially the same thing, but not exactly the same thing, and there seems to have been some difference of opinion here on Tuesday between Mr. Friedel and various proponents of the bill as to what the status of the legislation in Maryland might be. I won't want to have that particular language inserted into the bill and have to rely upon that to protect and leave the present situation in South Carolina as it is.

I might add that I am glad to say that Mr. Cramer indicated that he thought some kind of an amendment should be added to the present proposed legislation which would except from the coverage of the bill devices which are lawful under the laws of the State concerned. He indicated as a proponent of the one of the bills before this committee that he thought that in order to protect States' rights and to get around the doubtful constitutionality of attempting to do away with the police powers of the State on that point some language—he did not suggest any particular language—should be sufficient. I have suggested on page 9 of my statement words which I think would be in the right direction.

I don't hold any special brief for the particular words. Just following along the line of Mr. White's phraseology, however, I have suggested that we say:

*Provided further*, That it shall be lawful to transport in interstate commerce any device commonly known as a pinball machine into any State in which the manufacture or use or operation of such device is lawful, by statute, decision, licensing, or otherwise—

in other words, where it is lawful, regardless of how that legality may have been determined, by specific legislative enactment, or by court decision, or by the absence of prohibitive legislation, or what—and the provisions of this Act shall not be construed to pertain thereto.

Something along those lines I think would improve the bill considerably. As I conceive it, it leaves the situation in South Carolina as now exists, which to me as a former law enforcement officer appears substantially satisfactory.

The Attorney General has indicated that he does not object to the proviso which was inserted in the bill in the Senate making an exception in favor of

parimutuel and other betting equipment or materials used or designed for use at racetracks or other licensed gambling establishments where betting is legal under applicable State laws.

I don't conceive that, unless some amendment of the sort that I have just referred to is put in, this language would protect South Carolina's right to permit the use of these machines, because this proviso which is in the bill as passed by the Senate relates only to "parimutuel or other betting equipment or materials used or designed for use at racetracks or other licensed gambling establishments," and we have no racetracks or licensed gambling establishments in South Carolina so that exception would not cover anything that is being done in South Carolina. There were certain soothing comments made during the



course of the testimony yesterday which indicated that people thought that maybe that was intended to provide an exception, but those words are not broad enough to cover our situation in South Carolina.

I also find it analytically difficult to see how the Attorney General and the Senate can be willing to make an exception in favor of parimutuel betting and licensed gambling establishments, which as I understand, exist only in a few parts of the country, but deal in very large sums of money, but might not be willing, as the bill now stands, to authorize or to make an exception in favor of these little old amusement devices, which have doubtful gambling application, in South Carolina, anyway. What I am saying in effect is that if the Attorney General and the Senate, and I would hope this committee, were willing to authorize an exception in favor of large-scale admitted gambling involving large sums of money, then the use of nonpayout pin tables with free play features in South Carolina—it is almost a *de minimis* proposition—also ought to be excepted from the application of the act, and I assure you that the Attorney General is not going to have any trouble with organized crime in South Carolina that he can't handle under existing legislation, ordinary criminal legislation, including, of course, the conspiracy laws.

In conclusion, insofar as South Carolina is concerned, I see no need for the present legislation, although I concur and heartily commend the Attorney General for the basic objective that he is trying to get to in the rest of the country. If this committee feels, and I gather that the sense of the committee is that possibly some legislation is necessary, that some legislation along these lines is necessary, I would suggest as a lawyer that the language of the bill be tightened up and be made more specific so that it is possible to determine from the language of the statute itself and not from some slippery legislative history or an administrative determination what is legal and what is illegal, and that an exception be made under the police powers of the State to protect devices which are lawful in whatever manner under the law of the State which is concerned.

That is the burden of my principal statement, Mr. Chairman. I am perfectly willing to answer any questions that I can answer.  
(The statement referred to follows:)

STATEMENT OF IRVINE F. BELSER, JR., ATTORNEY AT LAW, COLUMBIA, S.C.

My name is Irvine F. Belser, Jr. I am an attorney actively engaged in private practice in Columbia, S.C. I am a graduate of Yale University and Harvard Law School. I also served for a number of years as the first assistant U.S. attorney for the eastern district of South Carolina and consequently have some practical working knowledge of the matters under consideration by this committee.

I appear here today on behalf of Peach State Trading Co., of Macon, Ga., a wholesaler or distributor of coin-operated amusement devices, doing business in Georgia and South Carolina. My client sells to operators a wide variety of such devices, including pinball games or tables, both of the type which the Attorney General seeks to prohibit under the present proposed legislation and also the so-called amusement type such as manufactured by Mr. Rufus King's client, as well as coin-operated bowling alleys, shuffle alleys, guns, pool tables, jukeboxes, and similar devices. It does not operate such devices or otherwise control in any way the locations in which they are placed or the use to which they are put.

As a lawyer and a citizen vitally interested in good government, I, too, commend the Attorney General for the efforts he is making to suppress organized crime and rackets, and for the success which he says he has already achieved in that direction.



In my opinion, however, and looking at the matter for the moment entirely from the standpoint of my State of South Carolina, the present proposed legislation is unnecessary. As I understood the Attorney General's testimony of day before yesterday the present bills are directed primarily against organized crime and racketeering." I can state emphatically, without fear of contradiction, that South Carolina has no organized crime or racketeering of the sort the Attorney General apparently has in mind. Of course we have law violation and crime in South Carolina, like everywhere else where people are human beings and not angels, but for whatever reason, whether we lack the large concentrations of wealth and population generally found where organized crime and racketeering exist, it is not on an organized or bigtime basis. Certainly there are no syndicates or organized rackets of which I have ever heard. Certainly there are no large gambling profits or establishments. With the exception of coin-operated nonpayout pin tables with free play feature (if they could fairly be called gambling devices), which are legal in South Carolina under a specific legislative enactment, parimutuel betting and all types of games of chance of whatever name or kind are illegal in South Carolina and, as a practical matter, do not constitute a major problem.

My client's customers are not criminals or bigtime gamblers and have no connection with organized crime. They are ordinary small businessmen, each owning possibly some 100 amusement devices of one kind or another, at 50 to 60 locations. The vast majority of the equipment (approximately 95 percent) is bought on an installment basis, with a downpayment of 25 percent and the balance payable in 6 to 12 months. The purchases are financed through various banks in South Carolina and Georgia, and we have been told by the principal bank buying such paper in South Carolina that these accounts are among the most satisfactory they have, with defaults almost nonexistent.

Such a situation hardly smacks of crooks or hoodlums. Criminals usually deal in cash, which leaves no record. Moreover they rarely have credit acceptable to banks.

The locations are generally small restaurants, beer halls, filling stations, or similar businesses, with 4 or 5 people dependent on each such place for a livelihood.

In South Carolina at least, the amounts of money involved do not even approach the huge sums referred to by the Attorney General and Mr. Rufus King. I would estimate that the average gross take from each location would be less than \$50 per week. This, of course, must be divided between the operator and the location owner. Out of his portion the operator must pay for the devices, service them each week, provide all necessary parts, lights, lubricants, etc., pay for all required permits and licenses; pay city, county and State taxes, and otherwise bear the usual expenses of operating a small business. After absorbing all of these expenses the operator does well to make an ordinary living.

It should be noted that the figures cited by the Attorney General and Mr. Rufus King apparently disregard completely all of these ordinary and necessary expenses of doing business.

The location owner's share of the gross take is usually just about enough to pay the rent on the place.

Enactment of the proposed legislation in its present form would, in my opinion, seriously cripple and perhaps ruin the business of my client and most of its customers. It would disrupt the budget and revenues of the great majority of the location owners. It is safe to say that it would destroy or seriously interfere with the livelihood of some 10,000 persons in South Carolina.

I consequently feel that insofar as South Carolina is concerned, the proposed legislation is both unnecessary and harmful.

Furthermore looking at the proposed bills from the standpoint of a practicing attorney I feel that they contain several serious flaws.

In the first place, as I understand the testimony of the Attorney General and Mr. Rufus King, the proposed language of the bills attempts to cover, in generic terms, all machines or mechanical devices which are designed and manufactured primarily for use in connection with gambling and which meet certain other specified tests relating to the element of chance and delivery or entitlement to receipt of money or property. In other words, assuming the other elements are present, the primary test is whether the manufacturer designs and manufactures the device primarily for use in connection with gambling. Thus the test becomes the manufacturers' intent in designing and manufacturing the device. Who is to determine the manufacturer's intent, or how it is to be determined, is not spelled out. Indeed Mr. Rufus King asked the committee not to



attempt to do so, or to be more specific, for fear that the nefarious gamblers and manufacturers will think up some new way to get around the words used. The Attorney General stated that it would be up to him to convince the court in some test case, or cases, that the device concerned was designed and manufactured primarily for use in connection with gambling.

In my opinion this approach is highly undesirable and will only result in tremendous confusion and years of litigation. In the meantime, thousands of people, with their livelihood and business and indeed, their liberty, at stake, will be left to guess at how the Attorney General, and ultimately the court, will regard a particular device.

The Attorney General concedes that he does not intend to apply the proposed legislation to numerous games and devices in common use, even though they appear to possess the characteristics specified in the act. He attempts to make the distinction on the basis of whether or not he thinks the device is customarily used by or connected with bigtime gambling and organized crime. In the case of pinball games, he (and Mr. Rufus King) attempt to decide the manufacturer's intent on the basis of the presence or absence in contemporary machines of certain mechanical or electronic devices and the number of free plays the machine will record.

The founders of our country attempted to found a Nation based on government by law rather than government by men. In this vein the motto carved on the Supreme Court Building is "equal justice under law."

But we cannot have government by law, rather than by men, and justice will not be equal under the law, unless the law is clear and specific and not dependent upon the varying interpretations put upon vague, generic words from time to time by whoever happens to be in charge of enforcing it at the moment.

I consequently respectfully request that the games and devices which appear to come within the terms of the bills but to which the Attorney General does not intend to apply them, if enacted, be specified in the bills themselves and not be left to varying and conflicting administrative determinations or judicial decisions.

Secondly, it appears to me that the legislation in its present form, under the guise of regulation of interstate commerce, invades the rights of the States to determine for themselves under their police powers the legality or illegality of the various kinds of gaming or amusement devices, and is of doubtful constitutionality.

In the case of South Carolina the proposed legislation, as interpreted by the Attorney General and Mr. Rufus King, would declare illegal some types of "nonpayout pin tables with free play feature," and prohibit their transportation into South Carolina, even though such devices are legal under South Carolina law regardless of the number of free plays they will award or record.

Prior to 1949 pin-table machines which gave a variable number of free plays, or trade coupons redeemable in free plays or merchandise, were consistently held to be gaming devices and illegal under the State's antigambling statutes even if they also dispensed in addition merchandise of uniform value. *Griste v. Burch*, 112 S.C. 369, 99 S.E. 703; *Harvie v. Heise*, 150 S.C. 277, 148 S.E. 66; *Alexander v. Hunnicutt*, 196 S.C. 364, 13 S.E. 2d 630; *Cannon v. Odom*, 196 S.C. 371, 13 S.E. 2d 633; *Ingram v. Bearden*, 212 S.C. 399, 47 S.E. 2d 833.

In *Holliday v. Governor of State of South Carolina*, 78 F. Supp. 918, aff'd 335 U.S. 803, 69 S. Ct. 56, 93 L. Ed. 360, the plaintiff sought to enjoin the enforcement of the various statutes making certain enumerated gaming devices (including, by judicial decision, pin tables with free play features) unlawful. The injunction was refused by the trial court, and this was affirmed by the Fourth Circuit Court of Appeals and the U.S. Supreme Court.

Following this decision the General Assembly of South Carolina in 1949 enacted a specific statute amending the previous statutes so as to except "coin operated nonpayout pin tables with free play feature" and "automatic weighing, measuring, musical, and vending machines which are so constructed as to give a certain uniform and fair return in value for each coin deposited therein and in which there is no element of chance." 1949 acts of general assembly, p. 267, now codified as parts of sections 5-621 and 5-660 of the 1952 Code of Laws of South Carolina.

Consequently under the present law in South Carolina nonpayout pin tables are legal, even though they provide free play features. The law does not distinguish between types of pin tables offering larger or smaller numbers of free plays, as the Attorney General and Mr. Rufus King attempt to do by their interpretation of the present proposed legislation.

Such machines are licensed by the State tax commission, at a tax of \$75 each. Section 5-660 of the 1952 code of laws, as amended in 1955, 1956, 1959, and 1960.

The attorney general of South Carolina has interpreted this statute, however, as not authorizing the payment of cash to those who win free plays. See letter opinion of Hon. T. C. Callison, dated December 8, 1955, to the sheriff of Aiken County. Consequently it is considered illegal and a violation of the statute to give the player cash or merchandise of value rather than free games. Where such incidents are detected, the location owners or other person responsible is prosecuted and the machine confiscated.

The report of the Senate Committee on the Judiciary relating to S. 1658 indicates that Hon. Byron R. White, Deputy Attorney General, by letter dated July 25, 1961, to Senator Eastland, suggested a proviso to the bill so as not to prohibit the transportation of "any device commonly known as a pinball machine into any State in which the transported device is specifically enumerated as lawful in a statute of that State."

Although this amendment was not adopted by the Senate, I would request that a similar amendment be made in the bills presently before this committee. In view of the legislative history of the South Carolina statute, as discussed hereinabove, I am of the opinion that the language suggested by Mr. White would legalize the transportation of pin-table machines into South Carolina regardless of the number of free plays they award or record.

In order to eliminate any doubt on this point, however, and to avoid the possibility of a difference of opinion between the Attorney General and the State officials concerned, I would suggest that if this committee sees fit to report out with a favorable recommendation any bill on the subject under discussion, this committee recommend an amendment reading substantially as follows:

*"Provided further, That it shall be lawful to transport in interstate commerce any device commonly known as a pinball machine into any State in which the manufacture or use or operation of such device is lawful, by statute, decision, licensing, or otherwise, and the provisions of this act shall not be construed to pertain thereto."*

The Attorney General has indicated that he does not object to the proviso inserted by the Senate making an exception in favor of "parimutuel or other betting equipment or materials used or designed for use at racetracks or other licensed gambling establishments where betting is legal under applicable State laws."

Certainly if the Attorney General and the Senate feel that an exception is justified in the case of such types of outright and admitted gambling equipment at racetracks and licensed gambling establishments dealing in very large sums of money, where legal under local State law, an exception is justified in the case of such minor and doubtful devices as pinball machines offering free plays as an inducement to play, which are legal under local law.

In conclusion, insofar as South Carolina is concerned, I see no need or justification for the present proposed legislation. If this committee feels, however, that some legislation along the proposed lines is necessary, a respectfully request that the devices to which it is intended to apply be spelled out clearly and definitely and that an exception be made in favor of devices which are lawful under the laws of the State concerned.

The CHAIRMAN. Mr. Williams, any questions?

Mr. WILLIAMS. I don't believe I have any.

The CHAIRMAN. Mr. Nelsen?

Mr. NELSEN. No.

The CHAIRMAN. Mr. Moulder?

Mr. MOULDER. I have no questions, but I would say he has presented a very persuasive statement.

Mr. BELSER. Thank you, sir.

The CHAIRMAN. Thank you very much, Mr. Belser, for your statement.

Mr. BELSER. Thank you.

The CHAIRMAN. Mr. William S. Howard?

Mr. Howard, will you identify yourself.



# STATEMENT OF WILLIAM S. HOWARD, AMUSEMENT ASSOCIATION OF WASHINGTON STATE, AND AMUSEMENT ASSOCIATION OF CITY OF SEATTLE

Mr. HOWARD. Thank you, Mr. Chairman. I am William S. Howard, attorney. I am appearing on behalf of the Amusement Association of Washington State and the Amusement Association of Seattle which is the largest city in the State of Washington.

The CHAIRMAN. You may file your statement at this point in the record and summarize what you intend to say.

(The statement referred to follows:)

## STATEMENT OF WILLIAM S. HOWARD, ATTORNEY, APPEARING ON BEHALF OF AMUSEMENT ASSOCIATION OF WASHINGTON (STATE) AND AMUSEMENT ASSOCIATION OF SEATTLE

Mr. Chairman, I appear before your committee on behalf of the Amusement Association of Washington (State) and the Amusement Association of Seattle. My remarks are supplemental to those of Mr. Martin Nelson who has appeared previously. I am William S. Howard, an attorney practicing privately in Seattle, Wash., and am a graduate of the University of Washington School of Law.

Chapter 82.28 of the Revised Code of Washington levies an excise tax for the act or privilege of engaging in business as an operator of certain mechanical devices:

"(1) Upon every person engaging within this State in business as an operator of any pinball machine, iron claw machine, traveling crane, or other similar mechanical device wherein the element of skill or a combination of the elements of chance and skill is involved in determining a payment to a player \* \* \* equal to 20 percent of the gross operating income of the business. \* \* \*

"(2) Upon every person engaging within this State in business as an operator of (a) any mechanical device wherein only the element of chance determines a payout to the player \* \* \* equal to 40 percent of the gross operating income of the business."

This legislation was adopted in 1941 and thereafter amended in 1947, 1949, and 1955. The tax commission has uniformly imposed a tax of 20 percent on all pinball games regardless of the number of free plays registered thereon for the reason that the same are construed as devices "wherein the element of skill or a combination of the elements of chance and skill is involved as distinguished from those devices wherein only the element of chance is involved," which are taxed at the rate of 40 percent.

Despite this longstanding distinction at the State level, passage of S. 1658 in its present form would prohibit the shipment into Washington State of mechanical devices in current use there and eliminate a useful source of tax income. Annual excise tax income to the State is slightly in excess of \$2 million annually. The licensing statute also requires the maintenance of records by licensees, payment of taxes due within 15 days after the end of each calendar month and that a metal identification plate be affixed, under glass, to each device in use.

County and municipal taxing districts are specifically authorized to impose additional taxes. King County, largest in the State, receives annual income slightly in excess of \$100,000 from this source and the city of Seattle, largest municipality, has been paid through license fees and taxes from the licensing of such games the following sums for the past 5 calendar years.

1957	\$158,370.00
1958	191,995.00
1959	156,920.50
1960	153,490.50
1961	221,643.84

Licensees must have been residents of the area covered by the appropriate licensing unit for at least 5 years and must be screened by the appropriate law-enforcement agency. Persons with criminal records are not licensed. In the event the business location proprietor does not own his own equipment, he is prohibited from accepting financial assistance from the leasing operator thereof.

He is also prohibited from changing from one such lessor to another without the consent of the appropriate licensing unit. No mechanical device may register more than 160 free plays and all gambling is forbidden. There is no crime syndicate operating in the State, and no racketeering and there are no so-called bigtime operators.

Instead, they are longtime residents, taxpayers and homeowners. They are raising their families in the State and educating their children in schools therein.

Administrative agency proponents of this measure in its present form ask in effect for the unfettered right to determine without standards whether some of the mechanical devices now licensed in Washington State are manufactured primarily for gambling purposes. They ask for Federal police power in an area which has traditionally been reserved to the States. Yet, they concede that any of these machines may be used for illegal gambling by persons not in commerce, interese themselves. What can this legislation in its present form actually accomplish?

We request that the committee consider the following amendment:

"Amend section 1(a) 2(B) of S. 1658 by adding the following proviso at the end of the first proviso:

"*Provided further*, That it shall not be unlawful to transport in interstate commerce any device defined in section 1(a) 2(B) of this Act, or a subassembly or essential part thereof intended for use in connection with such device, into any State in which the use of the transported device is licensed, taxed or permitted under the laws of that State or any subdivision thereof."

Mr. HOWARD. Thank you, Mr. Chairman. I practice privately in the city of Seattle, Wash., and I am a graduate of the University of Washington School of Law.

I should like to point out to the committee that chapter 82.28 of the Revised Code of Washington levies an excise tax for the act or privilege of engaging in business as an operator of certain mechanical devices:

(1) Upon every person engaging within this State in business as an operator of any pinball machine, iron claw machine, traveling crane, or other similar mechanical device wherein the element of skill, or a combination of the elements of chance and skill, is involved in determining a payment to a player \* \* \* equal to 20 percent of the gross operating income of the business \* \* \*

(2) Upon every person engaging within this State in business as an operator of (a) any mechanical device wherein only the limit of chance determines the payout to the player \* \* \* equal to 40 percent of the gross operating income of the business.

Now, this legislation was adopted first by the legislature in 1941. It was thereafter amended in 1947, 1949, and 1955, so that the legislature has given it careful consideration over a period of time. I do not mean to imply that the terms of the statute specifically make such devices legal. I merely imply that they provide for the licensing of them.

The tax commission in making a determination in regard to the devices which have been brought before your committee, has uniformly imposed a tax of 20 percent on all pinball games regardless of the number of free plays which may be registered thereon for the reason that they have construed these devices as those wherein the element of skill, or a combination of the elements of chance and skill is involved as distinguished from those devices wherein only the element of chance is involved, which are taxed at the rate of 40 percent. This is a determination which has been made on an administrative basis by the tax commission in the State of Washington.

As a practical matter the members of the associations that I represent advise me that about 95 percent of the pinball games which are sold in the State of Washington are manufactured by the Bally Manu-



facturing Co., as distinguished from those produced by the Gottlieb Manufacturing Co. They tell me that the reason they put on location, or the wholesaler sells to the operators, this type of device is because it is more interesting to the general public. They find that members of the general public prefer to play it, apparently because it seems to be more complex or appears to be more complex, and there is more interest in playing this type of machine. For that reason most of the operators purchase it.

I suppose this is the same type of thing as an automobile manufacturer attaching a safety belt to his car as standard equipment in the hope that perhaps he will be able to sell more vehicles than his competitor sells, and from the representations that have been made to me by those who are members of the associations I represent, I gather that this is largely a question of competition between two particular manufacturers of various types of devices, and that apparently at the present time at least one of these devices is more attractive to players as a group than the other is.

Despite this longstanding distinction which has been made at our State level, passage of Senate bill 1658 in its present form would prohibit the shipment into Washington State of mechanical devices which are in current use there, and would eliminate a large source of tax income.

As the Honorable Thomas M. Pelly, who is the Congressman from the congressional district in Washington where I reside, said yesterday, these tax sources are substantial. The records indicate that from this excise tax income the State of Washington receives slightly in excess of \$2 million annually. The licensing statute requires the maintenance of records by licensees, payment of taxes due within 15 days after the end of each calendar month, and also requires that a metal identification plate be affixed under glass to each device in use so that the tax commission at all times knows who owns these devices, where they are, and to what use they are being put.

County and municipal taxing districts are specifically authorized to impose additional taxes. King County, which is the largest in the State, and the only one on which I have figures available, receives an annual tax slightly in excess of \$100,000 from this source, and the city of Seattle, the largest municipality, has been paid through license fees and taxes from the licensing of such games, the following sums in the past 5 calendar year: in 1957, \$158,370; in 1958, \$191,995; in 1959, \$156,920.50; in 1960, \$135,490.50; and in 1961, \$221,643.84.

I might add at this point that the gentleman from California, Mr. Younger, asked yesterday why there had been such a sudden increase in the amount of taxes collected by the city of Seattle between 1960 and 1961. For the information of the committee, the answer is very simple.

The city of Seattle raised the tax rate during that year. Licensees must have been residents of the area covered by the appropriate licensing unit for at least 5 years and they must have been screened by the appropriate law enforcement agency. Persons with criminal records are not licensed. In the event the business location proprietor does not own his own equipment he is prohibited from accepting financial assistance from the leasing operator thereof. He is also prohibited from changing from one such lessor to another without the consent of the appropriate licensing unit.

No mechanical device may register more than 160 free plays and gambling is forbidden. I, like Mr. Belser, will not represent to you that I am sure that there are no payouts in the State of Washington. It may well be that there are. There have been a few prosecutions in the area. If there are, they are few and far between. They are carefully controlled by the various police departments. There is no crime syndicate operating in the State of Washington. There is no racketeering and, to use the term that the Attorney General used, there are "no bigtime operators," so that we feel that the impact of this legislation in the State of Washington would effectuate removal from the State and its various junior taxing districts of a substantial source of income.

This may be more important to us in that jurisdiction than in others. Our supreme court has declared a graduated net income tax to be unconstitutional and in consequence the legislature has been forced to provide a series of what we sometimes call nuisance taxes in order to keep services at a reasonably high level. In consequence, we have a hit-and-miss tax system composed of a business and occupation tax, a sales tax, a huge excise tax on cigarettes and on liquor, and other taxes of that nature.

One of the taxes that falls in this category is the excise tax on these mechanical devices; and as a practical matter not only the three entities I have mentioned, the State of Washington, the city of Seattle, and the county of King, are concerned, but so are numerous other small municipalities of 15,000 or 20,000 people where these devices are used as trade stimulants. This is a phrase that is generally applied throughout the State. They are not referred to as gambling devices. In our area the trade stimulants have become important. It is estimated that there are over 3,000 individual proprietors in the State of Washington who run cigar stores, small grocery stores, small taverns, or something of that kind who would probably go out of business if it were not for this particular income. To remove this income, both from the small businessman and from the tax rolls, would cause a considerable economic dislocation in our State.

Like Mr. Belser, I was greatly impressed with Congressman Dingell's comments yesterday about the necessity of a potential defendant determining what his rights are by reason of the legislative history in a particular situation. I agree with Mr. Belser that it is difficult enough for attorneys at a considerable distance from the National Capital to obtain and determine what the legislative history may be in a given area and it is virtually impossible to expect a layman to do that. We are gravely concerned about the nature of this bill as it presently stands. In effect, we feel that the proponents of the measure ask in effect for the unfettered right to determine without any standards whether some of the mechanical devices now licensed in Washington State are manufactured primarily for gambling purposes. They come to your committee and suggest they want Federal police power in an area which, in our State, we believe has been traditionally reserved to the States. Yet, if I read the testimony of the Attorney General correctly, on page 24 of the transcript in response to a question from Mr. Rhodes, Mr. Rhodes' question having been—

My question at this time is, To what extent have you found that the amusement machines are used for gambling purposes, so-called amusement machines?



The Attorney General said:

They are not used for gambling purposes. I mean just perhaps two people going and playing each other, or gambling with one's self, but by and large they are not used for gambling purposes, and it is not the kind of gambling, obviously, that we want to cover.

I think we all sympathize with the program to eliminate syndicates and organized crime. Yet we cannot believe that simply because two individuals not in commerce use one of these machines at its ultimate destination, for gambling interse themselves, the devices should be banned from shipment into Washington State.

Again, the committee heard yesterday Congressman, the Honorable Thomas M. Pelly, say that he had discussed this legislation with the Justice Department and that they had given him a "horseback" opinion to the general effect that they doubted that this legislation would prevent the shipment into Washington State of these devices. This is of little comfort to us because it leaves us in a position where, if the measure is passed in its present form, my clients, who are not wealthy men, will be in the position where they will either have to accept it or tests its constitutionality.

I suggest again that it has no adequate standards, that as the measure now stands it is an unlawful delegation of legislative authority to an administrative body, and we earnestly request that your committee consider the following amendment: Amend 1(a)2(B) of S. 1658 by adding the following proviso at the end of the first proviso:

*Provided further*, That it shall not be unlawful to transport in interstate commerce any device defined in section 1(a)2(B) of this act, or a subassembly or essential part thereof, intended for use in connection with such device into any State in which the use of the transported device is licensed, taxed, or permitted under the laws of that State or any subdivision thereof.

It is my understanding, Mr. Chairman, that objection was made yesterday by a member of your committee to the language "or any subdivision thereof." I would like to assure the committee that we have no pride of authorship in this particular language. I thought the Congressman indicated very persuasively what might possibly be a loophole, and if the committee feels that the amendment has merit, we certainly would be glad to strike the phrase "or any subdivision thereof." The reason it was included is because under the provisions of our State constitution no junior taxing agency, such as a city or county, may impose a tax unless it first gets the permission of the State itself, so that in our situation it is probably of no importance because no subdivision is going to be permitted to impose any tax unless it gets specific authorization from the State legislature.

Thank you.

The CHAIRMAN. Thank you very much, Mr. Howard.

Any questions by anybody?

Mr. DINGELL. Mr. Chairman, very briefly.

The CHAIRMAN. Mr. Dingell.

Mr. DINGELL. Is it made specifically legal by State law in the State of Washington to utilize, to sell, to play, and to import, and to traffic in pinball machines of both types that the Attorney General discussed?

Mr. HOWARD. No, sir, it is not specifically lawful.

Mr. DINGELL. Is it made specifically illegal by any State statute?

Mr. HOWARD. No, sir, it is not.

Mr. DINGELL. In other words, the statutes are silent with regard to this except insofar as taxing, is that correct?

Mr. HOWARD. That is correct, sir.

Mr. DINGELL. Would I be fair in inferring, then, that your attorney general or some officer of your State has passed upon the legality of these, perhaps by an attorney general's opinion?

Mr. HOWARD. Yes, there is an opinion which indicates that free play machines, which is all we of course have, are not gambling devices and do not necessarily contravene the gambling prohibition in our jurisdiction.

Mr. DINGELL. There was some ambiguity on this point in the record, as to whether or not they were illegal, and by reason of the taxing that the eyes of the authorities locally and statewide were closed to the existence and the operation of these machines.

Mr. HOWARD. No, that isn't the fact.

Mr. DINGELL. Thank you very much.

The CHAIRMAN. Thank you very much, Mr. Howard.

Mr. HOWARD. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. John Pierce.

Mr. Pierce, will you identify yourself for the record at this point?

**STATEMENT OF JOHN E. PIERCE, JR., PIERCE AMUSEMENT CO.,  
NEW ORLEANS, LA.**

Mr. PIERCE. Yes, sir. Mr. Chairman and gentlemen of the committee, my name is John E. Pierce, Jr., from New Orleans.

Shall I proceed with my statement?

The CHAIRMAN. Yes.

Mr. PIERCE. My name is John E. Pierce, Jr. I appear here on behalf of Pierce Amusement Co., 5225 St. Bernard Street, an operator of coin-operated pinball and other amusement devices. I am appearing here in opposition to all the above bills. However, I will confine my remarks to S. 1658 since the other two bills, H.R. 3024 and H.R. 8410, are practically identical to S. 1658.

At the outset may I say that I have been a resident and citizen of New Orleans all my life, and for the past 27 years I have been engaged in the coin-operated amusement business.

The enactment of this bill without the proper amendment would destroy my business. It would further affect many other people economically, such as employees of operators and location owners, who derive needed revenue from these amusement games.

In Senate Report No. 645 which accompanied S. 1658, a letter from Byron R. White, Deputy Attorney General, concerning the possible exemption of pinball games from the coverage of the act, appears. It is stated in such letter that—

it has been suggested that specific language be included in the bill permitting pinball machines to be imported into States where such machines are lawful.

The Deputy Attorney General then proposed the use of the following language to effect such intention:

*Provided further*, That it shall not be unlawful to transport in interstate commerce any device commonly known as a pinball machine into any State in which the transported device is specifically enumerated as lawful in a statute of that State.



This proposed amendment, although it apparently had the approval of the Justice Department, was not adopted by the Senate.

It is indeed heartening to see that the Attorney General's office appreciates the problem that exists with reference to pinball games, however, even if the amendment proposed by the Attorney General's office relating to pinball games had been approved by the Senate, no relief would have been obtained, since very few States "specifically enumerate as lawful in a statute," pinball games.

The specific enumeration of pinball games as lawful insofar as I have been able to determine is only done in a few States, although in several States wherein the operation of these games is considered to be lawful, by statutes and ordinances, license and otherwise, regulate the use of the games. Some other States which do not have licensing statutes, have by court decisions determined that pinball games are lawful. In still other States these games are openly and freely used with no regulation or licensing and even without a court decision determining that the game is lawful under applicable State laws. Unquestionably, however, the law enforcement arms of such States would have taken some action to prevent the use of these games if they were in fact considered to be gambling devices under such States' laws.

Under the suggested amendment by the Attorney General, a specific enumeration of the game as lawful would be required. This would be an unreasonable approach to the problem if the purpose of the amendment is to clarify the application of the law in its effect on games that are otherwise lawful in any given State.

Whether any game is a gambling device or not under the law of a particular State can only be determined, in the absence of a statute declaring it to be unlawful, by a consideration of the State's anti-gambling statute, the decisions, if any, of the courts of such State interpreting the antigambling statute as applied to the particular game, and any other applicable statute such as a licensing law, which would indicate approval of the game without, however, specifically declaring the game to be lawful.

Would the members of the committee conclude that the games of baseball or golf are gambling games merely because a State does not specifically declare such games to be lawful? To require a specific declaration of the lawfulness of a pinball game by a State which otherwise licenses the game, or whose courts have held the game to be lawful, or even in the absence of a specific holding by statute or by a court that the game is unlawful, would seem to be an indirect and confusing way to approach the problem.

The State of Louisiana, of which I am a resident, provides in title 47, section 375, for the licensing of coin-operated amusement devices and specifically provides in part as follows:

(E) \* \* \* All such mechanical amusement devices \* \* \* which do not return to the operator or player thereof anything but free, additional games or plays, or which through the exercise of the skill of the operator or player returns to the operator or player a merchandise prize shall not be deemed to be or classed as gambling devices and neither this act nor any other act shall be construed to prohibit same.

The above quoted section is very broad as you can see, and would include pinball games awarding free plays, however, a pinball game

is not "specifically enumerated as lawful," as would be required under the wording of the amendment suggested by the Attorney General.

Even in those States where specific language is used declaring a pinball game to be lawful, under the Attorney General's amendment, the argument could always be made that the type of pinball game mentioned in the State statute was not the type sought to be proscribed by S. 1658.

If there is to be any authority whatsoever left to the States to determine what kind of amusement devices are to be permitted within its jurisdiction then language other than that proposed by the Attorney General will have to be used.

In connection with our tax laws in Louisiana, I wish to point out to the committee that I pay a specific license on each machine I operate to the State, the city and Charity Hospital.

In addition to the licenses, I pay a sales tax of 3 percent on any game purchased as well as a personal property tax of approximately 4 percent to the State and city which is dedicated to schools and general public services.

I would like to suggest to the committee that consideration of the following language be made so that States such as mine which approve the use of pinball games although not specifically declaring them to be lawful can continue to permit its citizens to receive these games in interstate commerce.

Amend section 2 of the existing law by adding the following proviso at the end of the first proviso:

*Provided further, That it shall be lawful to transport in interstate commerce any device commonly known as a pinball machine into any State in which the manufacturing or use or operation of such device is lawful, and nothing contained in this act shall be construed to classify any such game as a gambling device.*

The CHAIRMAN. Thank you very much, Mr. Pierce. Does that conclude your statement?

Mr. PIERCE. Yes, sir.

The CHAIRMAN. Mr. Williams, any questions?

Mr. WILLIAMS. Mr. Pierce, this legislation is intended, according to the testimony of the Attorney General, to make a distinction between two types of machines, one machine which is manufactured primarily for amusement purposes, but which, of course, like nickels, could be used for gambling. That machine would, according to the Attorney General, be a legitimate or legal machine.

On the other hand, there is this other machine which obviously is manufactured primarily for the purpose of gambling, but which conceivably, under a rather long stretch of the imagination, could be used for amusement. That is the machine that is intended, according to the Attorney General's testimony, to be prohibitive from shipment in interstate commerce.

I believe you indicated that you were an operator.

Mr. PIERCE. Yes, sir.

Mr. WILLIAMS. As an operator, do you make the same distinction between the two types of machines?

Mr. PIERCE. I operate both kinds.

Mr. WILLIAMS. I understand you operate both kinds, but I mean do you recognize that there is a distinction between the two types of machines?



Mr. PIERCE. We pay merchandise prizes on both kinds.

Mr. WILLIAMS. I cannot hear you.

Mr. PIERCE. We pay merchandise prizes on each kind.

Mr. WILLIAMS. You do give merchandise prizes on each kind?

Mr. PIERCE. Yes, sir; that is permitted under our State Licensing Act.

Mr. WILLIAMS. That is not what I am talking about.

I say there are two types of machines. One is the category of machine which is manufactured primarily for gambling purposes, but which conceivably could be used or would be used for amusement.

The other is the machine which is manufactured primarily as an amusement device, but which, of course, can be used for gambling.

Do you make the distinction between the two types of machines?

Mr. PIERCE. Yes, sir. The game which the Attorney General is seeking to ban is more profitable to my operation.

Mr. WILLIAMS. I am quite sure of that.

Mr. PIERCE. I do not want to insult the intelligence of you gentlemen.

Mr. WILLIAMS. The legislation goes to the primary purpose for which it is intended to be used at the manufacturing level.

Do you believe that that is capable of being administered?

Mr. PIERCE. No, sir. There are no hoodlums or gangsters in New Orleans.

Mr. WILLIAMS. I am not talking about that. I am talking about the use for which the machine is manufactured.

You have already admitted to the committee, if you want to stay with the admission, that one type of machine is manufactured primarily for gambling purposes even though it can be used for amusement conceivably.

Mr. PIERCE. Yes, sir.

Mr. WILLIAMS. The other type of machine is manufactured for amusement purposes but can be used for gambling.

Mr. PIERCE. Yes, sir.

Mr. WILLIAMS. And you do recognize the distinction there?

Mr. PIERCE. Yes, sir.

Mr. WILLIAMS. It is the machine which is primarily manufactured for gambling purposes which conceivably could be used for amusement that the Attorney General is concerned with.

Mr. PIERCE. Yes, sir.

Mr. WILLIAMS. You do not feel that the Attorney General could make the same distinction that you made?

Mr. PIERCE. No.

Mr. WILLIAMS. Why?

Mr. PIERCE. Well, because they cannot be used for gambling.

Mr. WILLIAMS. I understand they can both be used for gambling. The legislation states "the primary purpose of which is gambling." You have indicated that there is one machine which has as its primary purpose gambling; the other machine has as its primary purpose amusement.

Mr. PIERCE. Let us put it this way: The good guys and the bad guys. The bad machine is made for gambling purposes.

Mr. WILLIAMS. Of course, it is made for gambling purposes. That is the one that the Attorney General wants to prohibit from shipping in interstate commerce.

According to the Attorney General, though, the machine which is primarily designed for amusement purposes would still be legitimate and would be permitted to be shipped. Even though both machines could be used for gambling, one is primarily designed for the purpose of gambling.

Do you feel that the Attorney General could make that distinction between the two types of machines and could do it properly?

Mr. PIERCE. Well, you know, these games change from time to time. They are made different ways.

Mr. WILLIAMS. I understand they change from time to time. As an operator can you look at a machine, the works inside it, the way in which it is operated, and distinguish between whether or not that machine was intended primarily for gambling purposes or whether it was intended to be used primarily for amusement purposes?

Mr. PIERCE. Yes, sir.

Mr. WILLIAMS. You can look at it and tell the difference?

Mr. PIERCE. Yes, sir.

Mr. WILLIAMS. Then what is there to preclude the Attorney General from making the same type of distinction between the two machines? Do you feel that the Attorney General would also be competent to make the same type of distinction between the two machines?

Mr. PIERCE. No; I do not. I have been in this business for 27 years and I know it forward and backward and sideways.

Mr. WILLIAMS. Maybe, if this legislation were passed, you would be a good man to administer the law for the Attorney General.

Mr. PIERCE. Well, if he would pay me enough money.

Mr. WILLIAMS. I would presume that he would hire experts in this field to advise him, but if you are competent to make that distinction, and you admit that there is a distinction, why would not the Attorney General, who would have the advice of counsel and the assistance of experts in this field, also be competent to make the same decision?

Mr. PIERCE. Because he would have to make a decision about every 3 or 4 months.

Mr. WILLIAMS. I do not follow you there.

Mr. PIERCE. He would have to make a decision about every 3 or 4 months because these games change. The types, the physical aspects of them, change.

Mr. WILLIAMS. You do not think he would be competent to make a decision every 3 or 4 months?

Mr. PIERCE. You kind of put me on the spot there. I would not go so far as to say that, but maybe he would have a little trouble.

Mr. WILLIAMS. All right. Thank you, sir.

Mr. DINGELL. Mr. Chairman, may I ask a few questions?

The CHAIRMAN. Go right ahead.

Mr. DINGELL. Mr. Pierce, you say you offer prizes in connection with playing your games. What is the nature of the prizes that you offer?

Mr. PIERCE. Different things.

Mr. DINGELL. Do you offer money as a prize?

Mr. PIERCE. No.

Mr. DINGELL. You do not?

Mr. PIERCE. No.

Mr. DINGELL. The prizes are limited to merchandise?

Mr. PIERCE. Pardon me?



Mr. DINGELL. The prizes that you offer are limited to merchandise?

Mr. PIERCE. Yes.

Mr. DINGELL. What is the amount, or the value, or the type of merchandise that you offer for winning?

Mr. PIERCE. I would say up to \$10.

Mr. DINGELL. Up to \$10?

Mr. PIERCE. Yes.

Mr. DINGELL. To win this \$10 merchandise, what does a player of one of these machines have to do?

Mr. PIERCE. To get the top prize he would have to make the highest score he could.

Mr. DINGELL. What, by the way, is the \$10 merchandise that you award for making this top score?

Mr. PIERCE. Well, an electric clock or something like that. We buy these prizes at wholesale prices, you know.

Where we might award a prize that to us would cost us \$10, it might be on the retail market for \$15.

Mr. DINGELL. Is this a general practice to offer these prizes for winning on these machines?

Mr. PIERCE. Yes, sir.

Mr. DINGELL. Do others in your industry offer similar prizes?

Mr. PIERCE. At different times I will go into other people's, we will call them, locations or places like that, restaurants, drugstores, and sort of get an idea what they are offering, but I say in general most all of them do.

Mr. DINGELL. This is within your particular State, Louisiana, or generally across the country?

Mr. PIERCE. Yes, sir; I quoted the statute on that.

Mr. DINGELL. In the State of Louisiana you are referring to?

Mr. PIERCE. Yes, sir.

Mr. DINGELL. Let me ask you this question. In your establishment, you indicated that you had both types of machines to which the Attorney General referred in his testimony.

Mr. PIERCE. Yes, sir.

Mr. DINGELL. Do you offer prizes for winning on both types of machines?

Mr. PIERCE. Yes, sir.

Mr. DINGELL. Do you offer the same prizes for winning on both types of machines?

Mr. PIERCE. No.

Mr. DINGELL. Let us take the machine which the Attorney General says is obviously set up for gambling and the machine which is obviously not set up for gambling, according to the Attorney General. On which do you offer the higher prize?

Mr. PIERCE. On the bad guy.

Mr. DINGELL. On the bad machine?

Mr. PIERCE. Yes.

Mr. DINGELL. I am sure, as you can see, that the committee is having a difficult time in grasping this particular problem.

Mr. PIERCE. Yes, I can.

Mr. DINGELL. Your testimony has been very helpful. Thank you very much.

Mr. PIERCE. Thank you, Mr. Chairman.

Mr. WILLIAMS. Mr. Pierce, approximately how many operators do you have in all your parish establishments?

Mr. PIERCE. About 40.

Mr. WILLIAMS. Then I would presume this is a highly competitive business in Orleans Parish?

Mr. PIERCE. Yes, that is true.

Mr. WILLIAMS. Most of these operators also operate in Saint Bernard and Jefferson, and so forth?

Mr. PIERCE. No, no. We are strictly Orleans Parish operated. May I say in applying for our licenses we have to furnish two character references each year before we can get our city licenses.

Mr. WILLIAMS. Knowing New Orleans, I know that this type of thing is generally accepted in that area, anyway, even though it might be to some extent contrary to State law, but the thing that we are concerned with is the distinction between the two types of machines and also the question of whether or not the Attorney General should be given sufficiently broad authority to make that distinction or whether or not, assuming that he should be given that authority, this particular type of machine which you referred to as a bad machine should be prohibited from shipment in interstate commerce. That is the problem that this committee is up against, and I may say that it is not a very simple problem to solve, either.

Mr. PIERCE. It is not a problem down there. In the 27 years I have been in the business, they have had several very able State attorney generals, and they seem to think they are all right.

Mr. DINGELL. Can you tell us what is the amount of prize that you offer on, let us say, the good machines referred to by the Attorney General?

Mr. PIERCE. A couple of dollars.

Mr. DINGELL. What is the percentage of the two types of machines that you have in your establishment?

Mr. PIERCE. What is the percentage?

Mr. DINGELL. Yes, one as opposed to the other.

Mr. PIERCE. Well, I would say the good machine about 5 percent.

Mr. DINGELL. About 5 percent?

Mr. PIERCE. Yes.

Mr. DINGELL. And 95 percent would be the other type?

Mr. PIERCE. Yes.

Mr. DINGELL. Do you find within your State that both types of machines are found in just one particular type of location, or will they be found everywhere, for example, in bars, soda parlors, or what is the distribution?

Mr. PIERCE. I do not operate in this particular spot, but they have them in the Moisant International Airport there, for instance.

Mr. DINGELL. Who has them there? Does the airport authority actually handle these, or is it done on a concession basis?

Mr. PIERCE. It is a concession basis.

Mr. DINGELL. Let me ask you this. As I read this bill, we are going to find that it is going to prohibit more than, let us say, pinball machines. It is going to get to the kind of bowling games that you find in bars occasionally. It is going to, I imagine, reach other kinds of devices not familiar to me.

Can you enumerate any other kinds of devices that will be under the prohibition of the bill if passed?



Mr. PIERCE. We operate shuffle and bowling games and pay prizes on them, merchandise prizes, so under the Attorney General's proposed bill they would be outlawed. That is strictly a game of skill.

Mr. DINGELL. You indicated to my colleague, Mr. Williams, that you could tell the difference between the two types of machines. How can you tell the difference between the two types of machines?

Mr. PIERCE. I imagine that he would have some problems there.

Mr. DINGELL. You say you would have some problems?

Mr. PIERCE. He would.

Mr. DINGELL. He would?

Mr. PIERCE. Yes.

Mr. DINGELL. And I would too, I assume.

How would I tell the difference?

Mr. PIERCE. Well, I do not know how to answer that.

Mr. DINGELL. Are there any particular indicia that are present in the one that are absent in the other or vice versa?

Mr. PIERCE. In any particular what?

Mr. DINGELL. Any particular mechanical characteristics that are present in one type as opposed to the other?

Mr. PIERCE. They change from time to time. Each company puts a new game on the market about every 3 months.

Mr. DINGELL. Thank you very much.

The CHAIRMAN. Mr. Pierce, let me thank you on behalf of the committee for your appearance and your testimony.

Mr. Morrison, one of your very able and fine Congressmen from Louisiana spoke to me about your appearance here this morning, so we are glad to have your statement.

Mr. PIERCE. He is a very dear friend of mine.

Thank you very much.

The CHAIRMAN. He is a very fine Congressman, too.

We have a statement of Mr. Edgar S. Kalb, which will be included in the record at this point at his request.

(The statement of Edgar S. Kalb follows:)

#### STATEMENT OF EDGAR S. KALB, MAYO, MD.

Gentlemen of the committee, my name is Edgar S. Kalb and I am the operator of a bathing beach located in Anne Arundel County, Md. Anne Arundel County is one of the four counties of Maryland in which gaming devices are operated under State law (there being a separate act of the general assembly covering each separate county). For the Anne Arundel County acts, see the 1957 edition of the Anne Arundel County Code, sections 12-1 to 12-13 inclusive, and the ordinances adopted thereunder by the Board of County Commissioners of Anne Arundel County, codified in the 1957 edition of the Anne Arundel County Code, chapters 31-1 to 31-60 inclusive. (Paperbacked copy of said ordinances submitted herewith.)

For the acts authorizing the operation of gaming devices in the other three counties in which such operations are legal, see Acts of the General Assembly of Maryland, 1951, chapter 184, applicable to Calvert County, see acts of 1951, chapter 183, for Charles County, and see acts of 1951, chapter 181, for St. Marys County.

Specific objections to S. 1658 with suggested amendments follow:

Objection No. 1: The use of the words "an element of chance" in lines 2 and 3 of page 2 of the printed act is so inclusive in coverage that they go far beyond the stated intent of the act and can be construed to include purely arcade-type amusements and games, commonly known as shuffle games, bowling games, pokerino games, free play target guns, and many similar games or mechanical devices operated at amusement parks and beaches, and upon which small prizes or awards are issued for attainment of certain scores or results achieved.

The Attorney General, in testifying before the committee, publicly stated that such games and mechanical devices were not intended to be included as gaming devices within the act.

It is practically impossible to make a single generic classification of such games and devices, which makes it necessary to spell them out to an extensive extent.

Suggested amendment No. 1: On page 2 of the printed act, line 3, after the word and comma "property," and before the word "provided," insert the following: "provided that the provisions of this subsection shall not apply to so-called arcade types of games and mechanical devices commonly known as shuffleboards bowling games free play target gun games pokerino games, skillo games, skee roll games, and other similar amusement games and mechanical devices, in which balls and/or disks are manually propelled without the use of so-called plungers.

Objection No. 2: In the State of Maryland, the playing of the so-called game of bingo is permitted by State law in the city of Baltimore and in many of the counties of the State.

It is not clear if the exceptions set forth on page 2 of the act, lines 3 to 11 inclusive, and which read as follows ("provided that the provisions of this subsection shall not apply to parimutual or other betting equipment or materials used or designed for use at racetracks or other license gambling establishments where betting is legal under applicable State laws") are intended to permit bingo apparatus and materials to be shipped in interstate commerce into States where the playing of such game is permitted by State law, but most certainly such apparatus and materials should be permitted to be shipped into such States.

If it is the intent of the aforesaid exception to permit such transportation of bingo apparatus and materials, then it is most difficult to understand how it could so operate, as the cited exception makes reference only to betting equipment and materials, whereas in playing bingo, the player does not bet upon the result of the game, but gambles upon the result of such game. Furthermore, as many of these bingo games are operated in church halls, lodge halls, and similar places, the limitation of the places where bingo may be played, to licensed gambling establishments is too restrictive.

Suggested amendment No. 2: On page 2 of the printed act, after the word and semicolon "laws;" and before the word "or," insert the following: "nor shall the provisions of this subsection apply to any apparatus or materials used in the operation of, or playing of, the game commonly known as bingo when used or played in any place where such use is legal under applicable State laws"

Objection No. 3: Both the Attorney General and Mr. Rufus King, in presenting their testimony in favor of the act, were understood to have stated that the effect and the intent of section 1(a) (2) of the act (page 2, lines 3 to 8 of the act) was to exempt any State or part of any State, in which the operation of gaming devices is permitted under applicable State law, from the provisions of the Johnson Act as amended in the Senate (S. 1658). It is difficult to read any such definite exemption in this subsection and it is practically impossible to arrive at any such construction of this subsection by inference. The language used in the cited exemption appears to relate to betting equipment and other materials used at racetracks or other licensed gambling establishments where betting is legal under applicable State laws. The difficulty seems to arise from the use of the word "betting" instead of the use of the more descriptive word "gambling".

All betting equipment and materials may be classed as "gambling equipment," but not all gambling equipment is necessarily betting equipment.

If the testimony of the Attorney General has been correctly understood i.e., that the intent of this subsection is to make States and parts of States, where gambling is legal, exempt from the provisions of the amended act, then there should be no objection to so amending this subsection for the purpose of clarification of its intent, so that all law enforcement officers and others may be clearly informed as to the correct purpose of the exemption.

If all three of the foregoing suggested amendments were to be adopted, then the amended section 1(a) (2) of the act would read as follows:

"(2) any other machines or mechanical device (including but not limited to roulette wheels and similar devices) designed and manufactured primarily for use in connection with gambling, and (A) which when operated may deliver, as the result of the application of an element of chance, any money or property or



(B) by the operation of which a person may become entitled to receive, as the result of the application of any element of chance, any money or property, provided that the provisions of this subsection shall not apply to parimutual or other gambling equipment or materials used or designed for use at racetracks or other licensed gambling establishments where gambling is legal under applicable State laws, and provided that the provisions of this subsection shall not apply to so-called arcade types of games and mechanical devices commonly known as shuffleboard, bowling games, free play target gun devices, pokerino games, skillo games, skee ball games and all similar amusement games and mechanical devices, in which balls and/or disks are manually propelled without the use of devices commonly known as "plungers," nor shall the provisions of this subsection apply to any apparatus or materials used in the operation of or in the playing of the game commonly known as bingo, when used or played in any place in any State where such use is legal under applicable State law; or"

[The suggested and consolidate amendments included above are italicized.]

Objection No. 4: On page 3 of the printed act, line 13, the intent of the word "possessed" is not entirely clear. Does this mean gambling devices acquired after the effective date of the act, or does it include all gambling devices "possessed" even though acquired prior to the effective date of the act?

One of the witnesses in favor of the act was understood to have testified that the word "possessed" related only to gambling devices acquired after the effective date of the act. If this understanding is correct and it is the intent of the act to limit the necessity of maintaining the required inventory as to only those gambling devices acquired after the effective date of the act, then it should be so stated clearly in the act, and not be left to the construction of the courts.

Suggested amendment No. 4: On page 3 of the act, after the end of line 18 insert the following: "provided no such inventory record shall be required for any gambling device or essential part thereof, which device or which part was acquired before the effective date of this Act."

Objection No. 5: On page 5, line 18, of the act, the intent of the word "possess" is not clear. If a person fails to register as required by the act, this provision (3) states that it shall be unlawful for him to possess any gambling device. Does the word "possess" refer only to such devices as were possessed after the effective date of the act, or is it the intent to prevent the person who is in violation of the act from possessing devices which he may lawfully have been in possession of prior to the effective date of the act: furthermore, does this use of the word "possess" mean that for evermore thereafter the violator shall be prohibited from ever possessing any gambling device? In its present form, it is possible to give the word "possess" almost any construction, with the possibility being, that if it be held, that it is intended to apply to all gambling devices possessed, including those acquired prior to the effective date of the act, then enforcement authorities could possible confiscate all gambling equipment that a violator possessed.

It may appear to the committee that a ridiculous and extreme view is being taken of the possibilities inherent in the language used, particularly so in view of the reassuring statements of the witnesses who have appeared in support of the act. However, there is no better teacher than experience, and the experience which the operators of gaming devices have had with overzealous law enforcement officers, under the original Johnson Act, is indicative of what they fear under the amended act, unless the exact intent of all language used is clearly stated in the act. For example, under the original Johnson Act, the act was made applicable to "dealers" in gambling machines and not to operators of gambling machines as is the present amended act. Attempts were made by enforcement agents to seize equipment of "operators" of gambling equipment under the theory that anyone who possessed or used a gambling device "dealt" in gambling devices, and it was not until the U.S. District Court for the District of Maryland enjoined the Attorney General of the United States from thus proceeding, that this practice was discontinued. It is because of such overzealous attempts at law enforcement in the past and because at some time in the future there may be a reoccurrence of such overzealousness that the committee is requested to clearly state the purpose of the language used in the act.

Suggested amendment No. 5: On page 5 of the act, after the end of line 19, insert the following: "acquired after the effective date of this Act, in violation thereof."

Objection No. 6: On page 6 of the act, in line 25, the use of the words "in his judgment" grants an unreasonable power to the Attorney General, a power which is not sufficiently limited as to make its scope sufficiently definite, and



the use of the words "in his judgment" is not required to make the intent of this subsection properly operative. If these words were eliminated, this subsection (j) would read as follows:

"The Attorney General is authorized and directed to make and enforce such regulations as may be necessary to carry out the purposes of this Act \* \* \*."

In any test of the correctness of such regulations, a court could determine their necessity from the context of the act, and would not be required to determine the validity of any such regulations on the basis of what the Attorney General "in his judgment" considered proper. The use of the words "in his judgment" would appear to make the entire subsection in violation of the "due process of law" provisions of the Constitution.

Suggested amendment No. 6: Strike out the words "in his judgment" on page 6, line 25, of the act.

Objection No. 7: On page 7 of the act, in line 1, the use of the word "purposes" appears to be unnecessarily "broad." It should be possible to determine from the language contained in any act just what the act is intended to do. The use of the word "purposes" makes it possible to go outside of the context of the act to determine what its "purpose" may be. This tends to make an act indefinite, and opens the act to interpretations of the courts. Insofar as possible, everything possible should be done to make any act, which imposes fines and imprisonment for its violation, as definite and clear as possible. It is, therefore, suggested that the word "purposes" be stricken out and the word "provisions" substituted therefor.

Suggested amendment No. 7: On page 7 of the act, in line 1, strike out the word "purposes" and insert in lieu thereof, the word "provisions."

Objection No. 8: On page 2 of the printed act, reference is made to the phrase "where betting is legal under applicable State laws" (in lines 7 and 8). There is nothing contained within the act which sets forth who is to determine that any particular State law is legal and applicable. It may therefore be assumed that it is the intention of the act that the Attorney General is intended to be the person who is to make such determination. From the testimony given by the Attorney General at the hearing, the impression has been obtained, that he may construe this phrase to refer to statutes which "spell out" the legal applicability of such statutes in specific language only, and that he may at his discretion hold, that a statute which is written in general terms and which statute had not been construed by a court of competent jurisdiction as to its legislative intent was not legally applicable, and that therefore, as to such particular State, the exemption set forth under the act was not effective, and thereby effectively deprive the operators of gaming devices operating in such State of their rights under State law.

In Maryland we are presently faced with two such situations as set forth below:

(1) By various acts (previously referred to on page 1 of the preceding statement submitted for the record) the General Assembly of Maryland has authorized the use of gaming devices in certain counties of the State. To permit the use of gaming devices in certain districts of Anne Arundel County the Legislature of Maryland enacted a series of three enabling acts (presently codified in the Code of Public Local Laws of Maryland in article 2) and also codified in the 1957 edition of the Anne Arundel Code as sections 12-1 and 12-13 inclusive, which code was legalized by chapter 334 of the acts of the general assembly of 1957 (previously codified in the 1947 code).

The Board of County Commissioners of Anne Arundel County, pursuant to the authority vested in them by these three acts of the General Assembly of Maryland, enacted certain ordinances permitting the operation of gaming devices in seven of the eight districts of Anne Arundel County. These ordinances have been codified in the 1957 edition of the Anne Arundel County Code (heretofore referred to).

Mr. Rufus King, the attorney who identified himself before your committee as the attorney for the Gottlieb Co., a Chicago manufacturer of pinball games, in his capacity as the attorney for a so-called citizens committee of Anne Arundel County, has, under date of December 15, 1961, filed a bill of complaint in the circuit court for Anne Arundel County, which bill of complaint alleges—among other allegations—that in enacting the aforesaid ordinances, that the county commissioners of Anne Arundel County had misconstrued and exceeded the authority vested in them by the enabling acts, and that therefore, the said ordinances (under which gaming devices are operated in such seven districts of Anne Arundel County) are null and void.



Despite the fact that the suit for the determination of the legality of these ordinances and the acts by virtue of which they were enacted, is now pending in court, what safeguard is there in the Senate version of S. 1658 which would protect any duly licensed operator of gaming devices in these seven districts of Anne Arundel County, from a determination by the Attorney General on his own volition, from holding that the contention of Mr. Rufus King was correct, and despite the pending litigation, move to seize any equipment of any operator in any one of these seven districts, who, in reliance upon the applicability and legality of the State law, had brought into the State, in interstate commerce, any gaming devices, after the effective date of S. 1658, and what is there in S. 1658 to prevent the Attorney General from subjecting such innocent operator from the criminal penalties which may be imposed for any violation of the provisions of S. 1658—being up to \$5,000 in fines and up to 2 years imprisonment, and do so despite the fact that the Court of Appeals of Maryland has held that any duly enacted law is valid until declared otherwise by a court of competent jurisdiction?

(2) A similar situation would be faced by the operators of gaming devices in the city of Annapolis, Md., as follows:

The charter of the city of Annapolis, being section 24 of article 2 of the Code of Public Local Laws of Maryland, authorizes the mayor and City Council of Annapolis to issue licenses for the operation of bagatelle tables and rondo tables and similar tables (these being gambling tables by court decisions) and the original act (passed in the late 1700's) repealed certain statewide gambling restrictions—insofar as they applied to the city of Annapolis. Subsequently, the general assembly enacted other statewide gambling statutes without specially exempting Annapolis City from their effect, and subsequently thereto the Code of Annapolis City was legalized by the legislature with the original provisions permitting the operation of such gambling devices in Annapolis City contained therein.

The mayor and city council pursuant to the powers vested in them to permit the operation of such gaming devices in the city and to issue licenses for such operation have passed ordinances to such effect. These ordinances have been in effect for a number of years prior to the latest legalization of the Annapolis City Code by the general assembly. The validity of these ordinances has never been challenged in the courts of Anne Arundel County (in which county Annapolis City is located and of which county it is the capital, as well as being the capital of the State).

Despite the fact that the Court of Appeals of Maryland has held that all acts of the general assembly and all ordinances enacted pursuant thereto are valid until declared invalid by a court of competent jurisdiction, what safeguard is there in S. 1658 to prevent the Attorney General of the United States, on his own volition or at the suggestion of some other person, from seizing the equipment of any operator in Annapolis City who may have brought such gaming device into the State (in reliance upon a law which was valid within the State) but which, despite such State held validity, had been declared by the Attorney General of the United States to be invalid, thus permitting the Attorney General to make such seizure and place the innocent operator under jeopardy under the criminal provisions of S. 1658?

Other serious questions may arise relative to statutes of other States.

In view of the possibilities inherent in the present broad language of section 1(a)(2) of S. 1658, possible examples of which were set forth above, it appears that there is a solemn obligation on the part of the Congress to incorporate stringent limitations upon the power set forth in S. 1658, of the exercise by the Attorney General of the right to determine what is or what is not "an applicable State law" as such words are used in S. 1658.

I do not presume to be able to draw an amendment which would effectively close all of the possible "gaps" in this wide-open power, but would suggest (as a beginning) that the act be amended as follows: plus the addition of every other provision which can be devised for such protection.

Suggested amendment No. 8: On page 2 of the printed act, after the end of line 19 and before the beginning of line 20, insert a new subsection to be known as subsection (g) and to read as follows:

"(g) The term 'under applicable State laws' as used in this subsection shall be deemed to mean any statute, and any decision of any court of competent jurisdiction, any ordinance enacted by any political subdivision of any State, which ordinance was enacted pursuant to powers delegated to such political subdivision by an act of the legislature of such State and which act directly



or inferentially authorizes such political subdivision to enact ordinances making the operation of gaming devices legal within the confines of such political subdivision, and any opinion of the attorney general of any State or other person authorized by the constitution of the State or by State law, to render opinions relating to the validity of or the intent of any State law or ordinance enacted pursuant thereto, shall be valid and binding upon the Attorney General of the United States and upon any person empowered to enforce the provisions of this act, insofar as such statutes, ordinances, and opinions relate to the operation of gaming devices within such State, and all such statutes, ordinances, and opinions shall be deemed to be the applicable law of such State, until declared to be invalid by a court of competent jurisdiction."

In presenting his testimony in favor of the act, one of the witnesses has gone to a great length to impress upon the committee the view that certain types of pinball games, as manufactured by a client whom he represents, are harmless, while certain other types of similar devices are harmful and, therefore, this particular type of device should be prohibited from being shipped in interstate commerce.

In the operation of our resort business, we do not operate any of the so-called in line pinball games, but we do operate the type of pin games which do not register the number of free plays and do not have a "cancel button." It is my conviction that either type of pin game is equally susceptible of being misused for gambling use in the same manner that many other innocent amusements may be likewise misused. I, therefore, find no reasonable basis for trying to distinguish between either type of pinball game, and, therefore, endorse the proposed amendment suggested on page 16 of the statement of Mr. Martin M. Nelson, attorney for the Bally Manufacturing Co. of Chicago, Ill., and suggest that it be adopted.

In conclusion, it should be stated that the assurances of the Attorney General of the United States, that there is no intention to go beyond the narrow view of the act, which he expressed, are believed and that no excessive efforts at law enforcement will be used. Despite these assurances, the fact remains that other persons ultimately will be empowered to enforce this act and it is impossible to anticipate what their personal views may be. Therefore, everything possible should be done, so as to make the language used in the act and the intent of the act as clear and as definite as possible.

If no other amendment be incorporated in S. 1658 it would appear to be imperative that some amendment along the lines outlined above should be adopted.

The citizens of the States are entitled to such protection against any such use of Federal power.

The CHAIRMAN. This concludes the hearings on this subject matter. The record will remain open for 1 week, giving others an opportunity to file a statement if they so desire.

The committee will adjourn.

(Whereupon, at 1:10 p.m., the committee adjourned.)

(The following letters and statements were also submitted for the record:)

STATEMENT OF THE NATIONAL LICENSED BEVERAGE ASSOCIATION BY THOMAS B. LAWRENCE, WASHINGTON LEGAL COUNSEL

Mr. Chairman and gentlemen of the committee, the representations made herein are in behalf of the members of the National Licensed Beverage Association. The members of this association are located in 28 States and the District of Columbia and number in excess of 40,000. They are proprietors of taverns, restaurants, bar-cafes, and small independently owned hotels.

This association is in general accord with the intent of S. 1658, H.R. 3204, and H.R. 8410, which seek to amend the act of January 2, 1951, prohibiting the transportation of gambling devices in interstate and foreign commerce. However, an exclusionary clause is suggested under section 3(a) of the above-titled bills.

The purpose of the subject bills is to eliminate syndicate gambling and racketeering. It is more specifically directed to curtailing the transportation of mechanical devices, including pinball machines which are designed primarily for use in connection with gambling. We do not believe that it is the intent



of this committee to ban the use of business stimulators. "Business stimulating" devices include punchboards, shuffle boards, bowling games, and similar devices.

Many members in rural areas in the Western States in particular as well as other members in the larger cities and fraternal organizations use these particular types of "business stimulating" devices. The profit, if any, is negligible. We feel, therefore, that the devices mentioned, and others similar in construction, certainly do not fall in the classification of "mechanical devices designed and manufactured primarily for use in connection with gambling." On the contrary, they are merely amusement devices which lend a small measure of entertainment to customers.

It is suggested that "business stimulators" be specifically eliminated from any bill which may be reported by this committee. The following, or similar, language could be inserted in the amendment to section 3(a) or other appropriate place:

*"Provided further, That punchboards, shuffle boards, bowling games, and other similar devices are determined to be amusement devices or business stimulators and are not to be construed as devices which are designed and manufactured primarily for use in connection with gambling."*

CHICAGO, January 12, 1962.

Re S. 1658, H.R. 8410, and H.R. 3024.

HON. OREN HARRIS,

House Office Building, Washington, D.C.

DEAR CONGRESSMAN HARRIS: Hearings on the bills referred to above are scheduled before the Committee on Interstate and Foreign Commerce for January 16, 17, and 18, 1962.

Herewith is a memorandum prepared by the undersigned for use in connection with the hearings on S. 1658 when that bill was under consideration by the Senate Committee on the Judiciary.

That committee reported out S. 1658 with an amendment deleting the prohibition against sales in foreign commerce. The statement of the Assistant Attorney General, Hon. Herbert J. Miller, was that one of the primary reasons for including the prohibition against shipments in foreign commerce was the condition existing in Cuba under the Batista regime, whereby substantial gambling revenues from Cuban operations were flowing back into the hands of top gamblers in the United States (p. 300, Senate hearings before the Committee on the Judiciary).

Under the Castro regime that condition no longer exists. Furthermore, neither Canada nor Mexico permits the importation of such machines (p. 24 of Senate hearings). Therefore, as pointed out on page 4 of Senate Report 645 to accompany S. 1658, the Attorney General indicated that he had no serious objection to the elimination of the prohibition against shipments in foreign commerce.

In view of the foregoing, and for the further reasons stated in the enclosed memorandum, we respectfully urge that these bills be reported out of the House Committee on Interstate and Foreign Commerce, insofar as they affect foreign commerce, in the form in which S. 1658 passed the Senate, and without the prohibition against shipments in foreign commerce.

Very truly yours,

QUINN, JACOBS, BARRY & LATCHFORD,  
By M. M. JACOBS.

#### STATEMENT OF MELVAN M. JACOBS

Melvan M. Jacobs, of the firm of Quinn, Jacobs, Barry & Latchford, 231 South LaSalle Street, Chicago, Ill., attorneys for Hershey Manufacturing Co., an Illinois corporation, represents on behalf of the company that the company, which through its Jennings & Co. division is a major manufacturer of so-called slot machines, is most sincerely in favor of and urges a favorable committee report as to those parts of the proposed amendments to the above-mentioned act, commonly referred to as the Johnson Act, which would enlarge upon and better define the persons who would be required to register and to maintain and file appropriate records in accordance with this act. However, the company strongly urges that that part of the proposed amendments to the act, providing for an interdiction to extinguish rather than to regulate any segment of foreign commerce, be seriously considered by the committee in the light of its pos-

sible effect upon the industry, the employment conditions of the various small businesses engaged in this industry, and the trade balances of the United States.

Jennings & Co. was incorporated under the laws of the State of Illinois on March 19, 1954, and it purchased the assets of O. D. Jennings & Co. from the estate of the late O. D. Jennings. O. D. Jennings & Co. had manufactured slot machines in the city of Chicago from 1906 until its acquisition by Jennings & Co. On May 15, 1957, Jennings & Co. was merged into Hershey Manufacturing Co., an Illinois corporation, which had been incorporated under the laws of the State of Illinois on April 27, 1939. Since that time, Hershey Manufacturing Co. has been engaged in governmental subcontract work, manufacture of vending machines, and photoflash equipment. However, over 80 percent of the business of the company is done through its Jennings & Co. division which manufactures slot machines. Therefore, this manufacture is the company's principal work.

In the last year the company has employed between 75 and 124 men, with an annual payroll for the year 1960 of \$308,120. In the year 1960 the company's gross sales of slot machines were \$961,226, of which over \$900,000 in sales was to 15 foreign countries, including Turkey, Germany, France, Italy, Sweden, England, Denmark, Spain, Canada, Aruba, Dominican Republic, Haiti, Iceland, Greenland, and Nova Scotia.

In the year 1960 gross sales to the United Kingdom were \$482,493, which is the result of the legalization of the use of these machines in the United Kingdom. It is anticipated by all those in the industry that sales to the United Kingdom, due to its adoption of a public policy in favor of use and regulation of these devices, will greatly exceed the 1960 shipments, since the demand in that country is exceeding the manufacturing facilities available in the United States. In volume 623, No. 110, Hansard's Reports for May 11, 1960, the Joint Under Secretary of State for the Home Government (Mr. Dennis Vosper), in quoting from a statement made by the Home Secretary, stated on page 428:

"We hope that the bill—with the improvements that will be made to it during its passage through Parliament—will provide reasonable freedom for people who wish to bet or to play games for money to do so, while, at the same time, retaining sufficient safeguards to act as deterrents against their being led into excess."

These comments on the bill to legalize slot machines in the United Kingdom stress that the public policy of the United Kingdom is not prohibition against gambling, but rather they have felt that control with adequate safeguards is their prime objective. As may be seen from this example, shipments into the United Kingdom from the United States are and will be in legitimate foreign commerce in accordance with the public policy of the country to which the devices are shipped. We do not feel, therefore, that a prohibition of shipment in foreign commerce will do other than encourage unemployment and an unfavorable European balance of trade, the result of which will culminate in putting not only the small businesses engaged in the manufacture of slot machines out of business, but affecting grievously the foundries and other suppliers of these manufacturers.

There are, to our knowledge, five companies engaged in the manufacture of slot machines in the United States at this time. They are as set forth below. With their approximate comparative percentages of sales:

	Percent
Jennings & Co., a division of Hershey Manufacturing Co., Chicago, Ill.	40
Mills Bell-O-Matic Corp., Chicago, Ill., and Reno, Nev.	35
Ace Manufacturing Co., Maryland	15
Buckley Manufacturing Co., Chicago, Ill.	5
Las Vegas Coin Machine Co., Las Vegas, Nev.	5

In connection with the enforcement of the Johnson Act and local gambling statutes, both the Federal Government and the State authorities have investigated the background of the owners and employees of Hershey Manufacturing Co., and these reports have shown that all persons connected with the company have the highest personal reputation, with no derogatory material about them or any connections they may have.



For these reasons and for the reasons of attempting to keep a balance of favorable foreign trade, the maintenance of U.S. gold reserves, and to prevent local unemployment, we believe that there should not be a prohibition on foreign commerce shipments. The revenue of the United States also would suffer from taxes lost on individual and corporate incomes, and the policy of the United States would suffer by extinguishing a small business which is shipping only to places where the devices in question have a lawful use.

This year the Supreme Court of the State of Illinois, in the case of *Hershey v. Adamowski*, No. 35831, rendered an opinion in which it stated that the manufacture of slot machines in the State of Illinois for shipment in compliance with the Johnson Act in interstate or foreign commerce was legal in this State. The court, in its opinion, emphasized that the machines in question have a potential for lawful use if manufactured on order for shipment into the State where gambling is legal (Nevada) and in foreign commerce, as the machines themselves are legal outside of this country. The machines in question were determined not to be contraband under this "potential for lawful use" doctrine.

We feel that the Johnson Act, as it may be from time to time amended, should take into account this potential-for-lawful-use doctrine and regulate the shipments to insure that the devices are shipped to legal localities, but we do not feel that Congress should prevent the shipment of any article of commerce for a legal usage, as such a prohibition could have no effect other than a detrimental effect on trade, employment, and the like, as set forth in this memorandum.

Allowing these companies to ship in foreign commerce could have no effect on the public policy of the United States, as the stringent provisions of the Johnson Act prohibit any shipment into the United States with both the Customs Bureau and the Attorney General's Office acting as safeguards against reentering.

The Hershey Co. keeps adequate records and is willing to make such reports, keep such records, and allow such inspections as may be deemed desirable to enforce the provisions of the present law and any amendments that Congress may make.

In conclusion, we would like to state that while we believe that the objectives of the bill are laudable, they can be fully attained without destroying a substantial, legitimate small business concern engaged in foreign commerce.

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D. GOTTLIEB & Co.,  
Chicago, Ill., January 23, 1962.

HON. OREN HARRIS,  
*Chairman, Committee on Interstate and Foreign Commerce,*  
*New House Office Building, Washington, D.C.*

DEAR MR. CHAIRMAN: On behalf of myself and Mr. Rufus King, counsel for our company, I would like to extend thanks to you and the committee for the courteous consideration we received last week during the hearings on S. 1658, H.R. 3024, and H.R. 8410, concerning interstate shipment of gambling devices. I attended all of the hearings and have read the various statements submitted by interested parties.

It was gratifying to note the committee's concern over the possibility that the proposed legislation might unintentionally include amusement pinball machines such as manufactured by our company. In connection with this concern, I would like to say something about a point brought up briefly by Congressman Williams.

For the past 15 years, I have worked in the design, engineering, and production of various types of pinball machines. To the uninitiated, these devices appear as somewhat of a mystery due to their complex structure. It is not surprising that questions should arise as to the function and purpose of their various components. Unless you have a background in electricity and mechanics, it is a little difficult to analyze their operation. It is important to note, however, that the operation of these or any other electromechanical devices does not remain a mystery for long to people with experience in this or similar fields. All devices are designed to perform certain functions and from these functions can be determined the intent of design. You must understand these functions, however, before intent can be established. Congressman Williams made mention of the fact that he assumes the Attorney General would employ technically oriented people to aid in the enforcement of the proposed legislation. I agree that this is a fair assumption in that various other agencies such as

the Federal Communications Commission and Federal Aviation Agency must also employ technicians to assist in the enforcement of the laws with which they are concerned.

In my opinion, the intent of the proposed law is clear and that the necessary regulations can be made by the Attorney General with technical assistance in a manner to insure compliance with legislative intent and also serve to protect those not intended to be affected. As a technician, I know that both gambling and amusement elements can be identified and evaluated on a purely objective basis.

Consideration by the committee and, if appropriate, inclusion in the record of the point I have just noted would be greatly appreciated.

Yours very truly,

ALVIN J. GOTTLIEB, *Treasurer.*

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